

1 IN THE COUNTY OF WASHINGTON

2
3 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

4 VIRGINIA GAS AND OIL BOARD

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7
8 JANUARY 20, 2004

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10
11 APPEARANCES:

12 MASON BRENT - REPRESENT GAS & OIL INDUSTRY

BILL HARRIS - PUBLIC MEMBER

13 DONALD RATLIFF - COAL REPRESENTATIVE

JAMES McINTRYE - PUBLIC MEMBER

14 BENNY WAMPLER - DIRECTOR OF THE DMME & CHAIRMAN

15
16 SHARON PIGEON, COUNSEL FOR THE BOARD WITH THE ATTORNEY
GENERAL'S OFFICE

17 BOB WILSON, DIRECTOR OF THE DIVISION OF GAS & OIL AND
PRINCIPAL EXECUTIVE TO THE STAFF OF THE BOARD

		<u>INDEX</u>	
	<u>AGENDA AND DOCKET NUMBERS:</u>	<u>UNIT</u>	<u>PAGE</u>
1			
2			
3	1) Report on escrow account		18
4	2 & 10) VGOB-03-1118-1223	AV-124	21
	VGOB-04-0120-1249	AX-135	
5	3) VGOB-03-1118-1232	Misc. Units	35
6	4-8) VGOB-98-0324-0626-03	S-36	72
7	VGOB-98-0421-0649-02	S-37	
	VGOB-98-1020-0695-01	T-35	
8	VGOB-98-0324-0625-03	T-36	
	VGOB-98-0421-0650-02	T-37	
9	9) VGOB-04-0120-1248	AW-135	Cont.
10	11-3) VGOB-04-0120-1250	AZ-99	74
11	VGOB-04-0120-1251	AZ-101	
	VGOB-04-0120-1252	BA-99	
12	14 & 16) VGOB-04-0120-1254	EE-11	85
13	VGOB-02-0521-1029-01	EE-38	
14	15) VGOB-04-0120-1255	VC-501826	93
15	17 & 18) VGOB-94-0215-0435-01		106
	VGOB-94-0215-0435-02		
16			
17	19) VGOB-97-0520-0584-01	COGC #34	3
18			
19	**Approve minutes from last hearing		
20	***Attached is a copy of the docket		
21			
22			
23			
24			

1 BENNY WAMPLER: Good morning. My name is Benny
2 Wampler. I'm Deputy Director for the Virginia Department of
3 Mines, Minerals and Energy, and Chairman of the Gas and Oil
4 Board. I'll ask the Board members to introduce themselves,
5 starting with Mr. Brent.

6 MASON BRENT: My name is Mason Brent. I'm from
7 Richmond, and I represent the gas and oil industry.

8 BILL HARRIS: I'm Bill Harris from Wise County, a
9 public member.

10 SHARON PIGEON: I'm Sharon Pigeon. I'm with the
11 office of the Attorney General.

12 JIM MCINTYRE: Jim McIntyre. I'm from Wise,
13 Virginia. I'm a citizen appointee to the Board.

14 BOB WILSON: I'm Bob Wilson. I'm the Director of
15 the Division of Gas and Oil and Principal Executive to the
16 Staff of the Board.

17 BENNY WAMPLER: We're going to go ahead to number
18 nineteen on the agenda today, the last item, because we have
19 only one disbursement. It may be helpful to some of the
20 other folks to hear the disbursement case to begin with since
21 we have some issues regarding that. The Virginia Gas and Oil
22 Board will consider an application for a disbursement of
23 funds on deposit in the escrow account for drilling unit COGC
24

1 #34, based on the claimants' settlement of claims regarding
2 ownership of gas production allocable to tracts wherein they
3 own gas rights. This docket number is VGOB-97-0520-0584-01.

4 We'd ask the parties that wish to address the Board in this
5 matter to come forward at this time. State your names.

6 JILL HARRISON: Good morning. Again, thank you all
7 very much. My name is Jill Harrison. I'm with Penn Stuart &
8 Eskridge in Abingdon. This morning I represent Cabot Oil and
9 Gas Corporation in this matter. They are the designated
10 operator for this unit. With me I have Mr. Michael Pryor and
11 Mr. Jeff Keim. Mr. Keim is with Cabot Oil and Gas
12 Corporation in it's Charleston, West Virginia office. I
13 won't be asking Mr. Keim any questions. He's here as the
14 company representative. Mr. Pryor will be my witness today.

15

16 BENNY WAMPLER: Do you want me to get him sworn in?

17 JILL HARRISON: Please.

18 (Witness is duly sworn.)

19 JILL HARRISON: To give the Board a brief
20 explanation of what we'll be doing, we...when we originally
21 had the force pooling on this unit in 1997, there were
22 certain interests which were unknown at that time because of
23 heirship matters and one tract involved an ownership dispute.

24

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1 What we plan to do today is to present evidence with regard
2 to two of the tracts, Tracts 4 and Tract 6, so that we my
3 have disbursement of those funds to show that the issues have
4 been resolved. With regard to Tract 5, some of the issues
5 have been resolved. We're going to present evidence with
6 regard to that. I have to go sort of halfway because in
7 order to revise my Exhibit C, I needed to show you this
8 current status of ownership. There is one dispute
9 outstanding so that the funds will not be disbursed, but I
10 needed to get evidence before you to show why our revised
11 Exhibit C is different from our Exhibit C.

12

13 MICHAEL PRYOR

14 having been duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 QUESTIONS BY MRS. HARRISON:

18 Q. Would you state your name, please?

19 A. Michael Pryor. I'm an independent
20 contractor. I'm here just to help Cabot kind resolve this
21 problem.

22 Q. Okay, you've been working with them on the
23 resolution of ownership issues in the COGC #34 unit?

24

--

1 A. Yes, I have.

2 Q. And is Cabot Oil and Gas Corporation the
3 designated operator for the COGC #34 units?

4 A. Yes, it is.

5 Q. In connection with the filing of this
6 application, did Cabot Oil and Gas Corporation give written
7 notice of this hearing to the interested parties of Tracts 4,
8 5 and 6 of this unit?

9 A. Yes, they did.

10 Q. And I'm going to show you a document which I
11 have marked as Exhibit Number One. Is this a photocopy of
12 the certified mail receipts evidencing delivery of the
13 written notice to those individuals?

14 A. Yes, it is.

15 JILL HARRISON: Mr. Chairman, I would ask that this
16 be entered into evidence as Exhibit Number One.

17 BENNY WAMPLER: That will be admitted.

18 Q. Also, in connection with this hearing, did
19 Cabot publish notice of this hearing in the Bluefield Daily
20 Telegraph newspaper on January the 1st, 2004?

21 A. Yes, they did.

22 Q. And I'll show you what has been marked as
23 Exhibit Two. Is that the notice of publication and
24

1 certification from the newspaper about the advertisement?

2 A. Yes, it is. A copy was filed on January the
3 13th, 2004.

4 Q. With the Board?

5 A. With the Board.

6 JILL HARRISON: Okay. And, Mr. Chairman, I would
7 ask that that be entered into evidence.

8 BENNY WAMPLER: That will be admitted.

9 Q. In the original force pooling application
10 that we had, were there certain unknown heirs in Tracts 4,5
11 and 6?

12 A. Yes. There were ownership involving Thomas
13 J. Belton, and the Thomas A. Belton heirs, we did not...we
14 could not find that.

15 Q. Okay. And I'm going to show, which has been
16 marked as Exhibit Three, is this the original Exhibit C that
17 was filed in 1997 with the force pooling application?

18 A. Yes, it is.

19 JILL HARRISON: Okay. And, Mr. Chairman, I would
20 ask that what you have marked as Exhibit Three, if you
21 would...excuse me, would you admit that, please. Did I say C
22 or Three?

23 BENNY WAMPLER: It will be admitted.

24

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1 JILL HARRISON: Three, I beg your pardon.
2 BENNY WAMPLER: Exhibit Three.
3 JILL HARRISON: Yes, sir.
4 Q. All right. Since that time you have been
5 able to identify the Belton heirs and resolve the ownership
6 as related to them?
7 A. As far as they're concerned, yes.
8 Q. Yes. And have you also been able to locate
9 the, what I'll refer to as the Alfred Waldron heirs on page
10 seven?
11 A. Yes.
12 Q. Okay. And I'm going to show you what has
13 been marked as Exhibit Number Four and ask you if this is a
14 correct revised Exhibit C to show the current status of
15 ownership interest as will be explained with the deeds we'll
16 present to the Board?
17 A. Yes, it is.
18 JILL HARRISON: And, Mr. Chairman, this has
19 previously been filed with the Board. But I wanted the Board
20 members to have their own copies to take a look at. If you
21 would, please admit that as Exhibit Number Four.
22 BENNY WAMPLER: That will be admitted.
23 Q. Focusing on Tracts 4, this is the tract in
24

1 which we have previously identified the heirs of Thomas A.
2 Belton and Thomas J. Belton as having an ownership interest
3 in the tract. How was that ownership issue resolved?

4 A. The heirs of Thomas A. Belton and Thomas J.
5 Belton, they had a quitclaim deed from them to Mr. Sparks on
6 that tract conveying any interest that they might have, if
7 any.

8 Q. Okay. And I would ask you to take a look at
9 this, which I've marked as Exhibit Number Five. If you would
10 identify that for the Board, please?

11 A. This is a copy of the quitclaim deed from
12 Mr. Randy Asbury who had the power of attorney for all of the
13 heirs involved with the Belton Estate. He conveyed a deed...
14 he conveyed the tract to Mr. Sparks, any interest that they
15 might have.

16 Q. And as a result of this quitclaim deed, this
17 resolved any issues outstanding with regard to the Thomas A.
18 Belton and Thomas J. Belton heirs?

19 A. Right. That's correct.

20 JILL HARRISON: Mr. Chairman, I'd ask that Exhibit
21 Five be introduced into evidence.

22 BENNY WAMPLER: That will be admitted.

23 JILL HARRISON: Thank you.

24

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1 Q. Going...well, let me finish up with Tract
2 Four. So, as a result of this quitclaim deed, the current
3 ownership interest of the tracts would then be in what
4 percentage?

5 A. It would be 50% to Charles David Sparks and
6 50% Melinda Sparks.

7 Q. Okay. Thank you. Then going to Tract
8 Number 5, there were certain ownership interests that were
9 identified with regard to the Waldron heirs. If you would
10 please explain to the Board how those were resolved.

11 A. The Waldron heirs, they also conveyed any
12 interest they had to Mr. Sparks on the 9.44 acres, which was
13 Tract 5, they conveyed all their interest to Mr. Sparks.

14 Q. Okay. And that would include Alfred G.
15 Waldron, Betty Rose Waldron, now Rhode, R-H-O-D-E, and Diana
16 Waldron Canter, now Walker?

17 A. Right. Yes.

18 Q. And are these copies of the two deeds which
19 were executed?

20 A. Yes, they are.

21 JILL HARRISON: Okay. Mr. Chairman, I would ask
22 that Exhibit Six and Seven be admitted into evidence.

23 BENNY WAMPLER: That will be admitted.

24

--

1 Q. Then also, Mr. Pryor, we had another
2 conveyance. We had previously shown Brockford, LC with
3 having an interest in Tract Number 5, and who is the current
4 owner of that tract---?

5 A. It's Wendell Kent Brockman.

6 Q. ---of that interest, I'm sorry?

7 A. For his...the interest has changed. If
8 any...if any interest is claimed, it's owned by Wendell Kent
9 Brockman.

10 Q. Uh-huh. And is Exhibit Number Eight a copy
11 of the deed from Brockford, LC to Wendall Kent Brockman?

12 A. Yes, it is.

13 JILL HARRISON: Thank you. Mr. Chairman, I would
14 ask that Exhibit Eight be introduced into evidence.

15 BENNY WAMPLER: That will be admitted.

16 Q. All right, then one last deed that we have,
17 and this is with regard to Tract Number Six. One of the
18 owners that was previously identified on the original Exhibit
19 C was Donald R. Beavers, and if you would, explain to the
20 Court how Melinda Beavers came to be the owner of that
21 interest.

22 A. Melinda Beavers and her husband, Donald
23 Beavers, got divorced and he conveyed all his interest in the

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1 tract to Melinda S. Beavers.

2 Q. As her sole and equitable estate?

3 A. Right.

4 Q. Okay. And is this instrument that has been

5 marked as Exhibit Number Nine, is that a copy of the deed

6 from Mr. Beavers to Mrs. Beavers?

7 A. Yes, it is.

8 Q. And after this conveyance, what would be the

9 current ownership of Tract Number Six?

10 A. It would be Melinda Beavers owning it, with

11 Mr. Sparks having to claim any claim that he would have...any

12 title that he derived from the Belton heirs in the tract.

13 Q. And would that be 50%?

14 A. 50%/50%.

15 Q. All right. So, we have both 50% to Mrs.

16 Beavers and 50%---

17 A. 50% to Mr. Sparks.

18 Q. Thank you. I did not ask you on Tract

19 Number Five, after the conveyances that were remaining, who

20 would be the two individuals at this point in time, or three

21 I guess, would have possible claims to that oil and gas?

22 A. It would be Mr. Wendell Kent Brockman and it

23 would be 50%, and then Charles David Sparks and his wife Mary

24

1 G. Sparks would be the other 50%.

2 Q. Well, we're not doing percentages because
3 there's a dispute, is that correct?

4 A. That's right.

5 Q. Okay. Those are the potential claimants?

6 A. Potential claimants, right.

7 Q. All right. Okay. After these instruments,
8 is the current ownership of the tract as reflected in the
9 revised Exhibit C that has been presented to the Board?

10 A. Yes.

11 Q. And has Cabot reconciled its records of
12 royalty deposits for the COGC 34 unit with the Board's escrow
13 agent?

14 A. Yes, they have.

15 Q. And what is the current amount that's
16 presently held in escrow for this unit?

17 A. \$23,000...\$23,791.69.

18 Q. All right. And at this point in time, I
19 would direct the Board's attention to Exhibit Number Ten,
20 which has the amounts that have been agreed upon by the
21 Board's escrow agent and by Cabot. If you would, please, go
22 through the figures for Tracts 4 and Tract 6 for us, please.

23 A. In Tract 4, there's \$16,903.13. In Tract 5,
24

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1 the amount in the escrow account is \$2,755.42. As far as
2 Tract 6 goes, there is \$639.35. There's an additional Tract
3 7, 8 and 9, which we're not...which we're not requesting the
4 Board to release the funds. There's \$3,493.79. That's not
5 related to these tracts.

6 Q. So, to the best of your knowledge, based on
7 the reconciliation, the amounts that are shown on Exhibit Ten
8 for Tracts Four and Six are the amounts that we would request
9 to be disbursed today?

10 A. That is correct.

11 Q. And on behalf of Cabot, are you requesting
12 that those funds be distributed to Charles David Sparks and
13 Melinda Sparks Beavers in the amounts shown on the exhibit?

14 A. That's correct.

15 Q. And from today forward, does Cabot also
16 request that the Board direct Cabot to pay any future
17 royalties to Charles David Sparks and Melinda Sparks on
18 Tracts 4 and 6 in the percentages shown in the exhibit?

19 A. That is correct.

20 JILL HARRISON: Mr. Chairman, that's all the
21 evidence that I have with regard to the...to the request for
22 disbursement.

23 BENNY WAMPLER: I have one question and the Board
24

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1 members may have some. On your quitclaim deed, Exhibit
2 Number Five.

3 JILL HARRISON: Yes, sir.

4 BENNY WAMPLER: ---the deed is to Charles David
5 Sparks. On the other deeds it's Charles David Sparks and
6 Mary G. Sparks, his wife. Is there any significance in that
7 regarding payout?

8 JILL HARRISON: No, sir. These are two different
9 tracts. Tract 5 deals with...I mean, excuse me, Exhibit Five
10 deals with Tract Number 4.

11 BENNY WAMPLER: Right.

12 JILL HARRISON: And then Exhibit Six and Seven are
13 on Tracts Number 5 for which we are not requesting
14 disbursement.

15 BENNY WAMPLER: So, the payout would be to Charles
16 David Sparks.

17 JILL HARRISON: 50% and Melinda Sparks 50%, yes,
18 sir.

19 BENNY WAMPLER: Okay. And is Mr. Asbury here?

20 JILL HARRISON: Yes, sir.

21 MICHAEL PRYOR: Yes, he is.

22 BENNY WAMPLER: Could we get you to come forward
23 and state your name for the record? Can I get you sworn in?

24

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1 (Randall Asbury is duly sworn.)

2 BENNY WAMPLER: State your name for the record.

3 RANDALL ASBURY: Randall Asbury.

4 BENNY WAMPLER: And it's represented that you're

5 the representative and attorney-in-fact representing the

6 folks---?

7 JILL HARRISON: The Belton heirs.

8 BENNY WAMPLER: Yes, thank you.

9 RANDALL ASBURY: Yes, sir.

10 BENNY WAMPLER: Any questions from members of the

11 Board?

12 MASON BRENT: Mr. Chairman, I just have one

13 comment. In my packet, Exhibit Six is not so marked so it

14 appears to just be part of the Exhibit Five.

15 JILL HARRISON: Oh, I apologize. That's a clerical

16 mistake on my part.

17 BENNY WAMPLER: Exhibit Six being the deed between

18 Alfred Waldron and Patricia Waldron. It is on the copy that

19 I have, yes.

20 MASON BRENT: It is marked on yours. Okay, it

21 wasn't on mine.

22 BOB WILSON: It's marked on the copy that we have

23 file copied.

24

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1 BENNY WAMPLER: Other questions or comments?

2 BOB WILSON: Mr. Chairman?

3 BENNY WAMPLER: Mr. Wilson.

4 BOB WILSON: I assume that the payment of future

5 royalties would be under the same portions as the

6 disbursement you show here?

7 JILL HARRISON: Yes, sir. The 50% between the two

8 parties, yes, sir.

9 BOB WILSON: And, Mr. Asbury, we've had lots of

10 conversations about the people for whom you are---.

11 RANDALL ASBURY: Representing.

12 BOB WILSON: ---representing. Are all of their

13 interests covered in this in a way that---?

14 RANDALL ASBURY: Okay, it's my understanding that

15 75% of the escrow amount went to the Belton heirs. The

16 future royalties in return are going to Mr. and Mrs. Sparks.

17 BOB WILSON: But this is a private agreement

18 insofar as that split is concerned between you folks and not

19 concerning...concerning this disbursement order?

20 JILL HARRISON: That's the financial arrangement

21 that has been worked out.

22 BOB WILSON: Thank you.

23 RANDALL ASBURY: Yes, sir, I have spoke with them.

24

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1 This is their wishes.

2 BENNY WAMPLER: Do you have any documentation
3 that...of course, we have this document where you've signed
4 as their attorney-in-fact. But do you have any documentation
5 where they have, in fact, signed to authorize you---?

6 RANDALL ASBURY: They have issued me power of
7 attorney, each person that was involved as far as the Belton
8 heirs.

9 JILL HARRISON: I believe Mr. Pryor---.

10 BOB WILSON: Mr. Chairman, I can...I can verify
11 that from conversations in the past.

12 BENNY WAMPLER: Do you have a copy of that---?

13 BOB WILSON: Yes. He has shown me those documents.
14 I think we have copies of most of them in the file.

15 MICHAEL PRYOR: I have recorded copies of all the
16 power of attorneys.

17 JILL HARRISON: We'd be glad to make a copy and
18 provide those to you.

19 BENNY WAMPLER: We will need copies...the Board
20 would like to have that as part of our files.

21 JILL HARRISON: We'd be glad to do that.

22 BENNY WAMPLER: Okay. Anything further? Other
23 questions?

24

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1 (No audible response.)

2 BENNY WAMPLER: Do you have anything further, Mrs.

3 Harrison?

4 JILL HARRISON: No...no, sir, I do not.

5 BENNY WAMPLER: Having heard the evidence, is there

6 a motion?

7 JIM MCINTYRE: Motion to approve.

8 BILL HARRIS: Second.

9 BENNY WAMPLER: Second. Any further discussion?

10 (No audible response.)

11 BENNY WAMPLER: All in favor, signify by saying

12 yes.

13 (All members signify by saying yes.)

14 BENNY WAMPLER: Opposed, say no.

15 (No audible response.)

16 BENNY WAMPLER: You have approval. Thank you very

17 much.

18 JILL HARRISON: Thank you very much. Thank you

19 also too, the other parties. We appreciate it very much.

20 BENNY WAMPLER: The next item on the agenda is the

21 Board will receive a year-end report on the Board's escrow

22 account as administered by Wachovia Bank Escrow Agent for the

23 Board. Mr. Wilson, do you have an update?

24

1 BOB WILSON: Yes, sir. I've given each of the
2 Board members a copy of the quarterly letter from Wachovia,
3 which shows that, for the quarter, deposits totaled
4 \$384,997.57; interest was total \$16,588.36. There were no
5 disbursements during the quarter. Starting with an opening
6 balance of \$7,754,578.61. Again, no disbursements and no
7 fees extracted from the account during this quarter. We had
8 a closing balance of \$8,156,166.54. The closing interest
9 rate in December was .92%.

10 For the year, to give you some...kind of a year-end
11 recap here. Our beginning balance as of the end of last year
12 for 2002 was \$6,988,647.25. The ending balance, as I've just
13 said, was \$8,156,166.54, giving a positive difference for the
14 year, a net difference, of \$1,167,519.29. Now, these figures
15 were taken from previous reports. There has been some
16 adjustments to this. So, there would not be an absolute
17 balance in these figures. Total deposits for the year were
18 \$1,572,367.63. Total interest paid was \$69,991.13.
19 Disbursements for the year, we disbursed \$414,824.65. Most
20 of that...in fact, all of that was during the first quarter
21 of the year. We paid total contract fees of \$60,000 to the
22 bank. Just for interest in both senses of the word, the
23 interest rate for the year the low point was 0.91% in August
24

1 and September. The high is what was what started the year
2 with, which was 1.2%. The year-end was 0.92%. At this time,
3 we're at the end of the year. There are four 413 docket
4 numbers that have escrow balance. The average balance in
5 each of those is \$19,788.00. The median balance, which means
6 half of the numbers are more than this and half of the
7 numbers are less, is \$3,824 or \$834. The low balance in the
8 account is \$.02, and the maximum balance in any account is
9 \$245,286.

10 BENNY WAMPLER: Questions or comments from members
11 of the Board?

12 (No audible response.)

13 BENNY WAMPLER: Of course, we all know the low
14 interest rates is to be able to maintain the ability to
15 payout at any point in time. Unless you go long terms
16 investments, you just can't get high interest rates, even
17 with \$8,000,000.

18 BOB WILSON: Yeah. Of course, we are also
19 constrained under this contract, or they are constrained as
20 to what they can invest this money in, as we've discussed
21 before---.

22 BENNY WAMPLER: Right.

23 BOB WILSON: ---because it is considered government
24

--

1 money. It has to be invested in safe instruments.

2 JIM MCINTYRE: Mr. Chairman?

3 BENNY WAMPLER: Yes, sir.

4 JIM MCINTYRE: If I understand that right, the
5 payout, or we paid the bank \$60,000 to administer the funds.

6 BENNY WAMPLER: That's correct.

7 JIM KISER: What was the total interest on that?
8 What was the total earnings on that fund?

9 BENNY WAMPLER: The total earnings for the year
10 were \$69,991.13.

11 JIM MCINTYRE: So, it's covering itself?

12 BENNY WAMPLER: Yes.

13 BOB WILSON: Yes. At this point in time, we're
14 still covered by interest. It's somewhat encouraging that we
15 have hit the low point in the interest and it has at least
16 come back up to some degree, not a great degree. At least
17 it's going in a positive direction now rather than downward.

18 MASON BRENT: Is that a prediction for rates?

19 BOB WILSON: No, sir.

20 (Everyone laughs.)

21 BENNY WAMPLER: Other questions?

22 BOB WILSON: If it was, I would hope you consider
23 the source.

24

1 BENNY WAMPLER: Other questions or comments?
2 (No audible response.)
3 BENNY WAMPLER: Thank you, Mr. Wilson. The next
4 item on the agenda is a petition from CNX Gas Company, LLC
5 for pooling of coalbed methane unit AW-124, docket number
6 VGOB-03-1118-1223. We'd ask the parties that wish to address
7 the Board in this matter to come forward at this time.
8 MARK SWARTZ: Mark Swartz and Les Arrington.
9 BENNY WAMPLER: The record will show there are no
10 others. Why don't we get Mr. Arrington sworn?
11 (Leslie K. Arrington is duly sworn.)
12 BENNY WAMPLER: You may proceed.
13 MARK SWARTZ: Mr. Chairman, this is one of three
14 Middle Ridge units on the docket today. The other two are
15 docket items nine and ten. Docket item nine, we had an
16 unknown owner in that unit. We have...I mean, they are
17 always continuing to look for people. In our title search,
18 we've turned up a fairly large number of people that kind of
19 answered that question. So, we need to continue number nine,
20 Aw-135. But I would like to combine, if I could, AW-124,
21 which is the item you just called, with item number ten,
22 which is AX-135.
23 BENNY WAMPLER: I'll go ahead and call that one. A
24

1 petition from CNX Gas Company, LLC for pooling of a coalbed
2 methane unit AX-135, docket number VGOB-04-0120-1249. We'd
3 ask the parties that wish to address this matter to come
4 forward at this time.

5 MARK SWARTZ: That would be Mark Swartz and Les
6 Arrington, as well.

7 BENNY WAMPLER: The record will show there are no
8 others. You may proceed.

9

10 LESLIE K. ARRINGTON

11 having been duly sworn, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 QUESTIONS BY MR. SWARTZ:

15 Q. Les, could you state your name for the
16 record, please?

17 A. Leslie K. Arrington.

18 Q. And who are you employed by?

19 A. CNX Gas Company, LLC.

20 Q. And what do you do for them?

21 A. I'm the manager of permitting and
22 environmental.

23 Q. Did you either participate directly in the
24

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1 preparation of the applications and notices and exhibits for
2 these two units or were they...to the extent that you didn't
3 do it yourself, were they prepared under your direction?

4 A. Yes, they were.

5 Q. Okay. And did you, in fact, sign the
6 notices and the applications?

7 A. Yes, I did.

8 Q. In both instances, who is the applicant?

9 A. CNX Gas Company.

10 Q. Is CNX Gas Company a Virginia General
11 Partnership?

12 A. Yes, it is.

13 Q. Is it a wholly owned indirect subsidiary of
14 Consol Energy?

15 A. Yes.

16 Q. Is CNX authorized to do business in
17 Virginia?

18 A. Yes, it is.

19 Q. In these two applications, are you
20 requesting that if the Board were to grant the applications,
21 or approve them, that CNX be appointed the designated
22 operator?

23 A. Yes, we are.

24

--

1 Q. And in conjunction with that, is CNX
2 authorized in the...in the Commonwealth?

3 A. Yes, it is.

4 Q. Is it registered with the Department of
5 Mines, Minerals and Energy and does it have a blanket bond on
6 file with the DMME as required by law?

7 A. Yes, it does.

8 Q. In both AW-124 and AX-135, have you
9 undertaken to notify the respondents?

10 A. Yes, we have.

11 Q. What have you done in that regard?

12 A. We have published in the Bluefield Daily
13 Telegraph and then we mailed by Certified Mail/Return Receipt
14 requested. Both of those were published in the Bluefield
15 Daily Telegraph. AW-124 was published on October the 27th,
16 2003 and AX-135 was December the 25th, 2003.

17 Q. Okay. When you published, what did you
18 publish?

19 A. The notice---.

20 Q. Okay. And the little map?

21 A. ---and the attached locate...yes, location
22 map.

23 Q. Okay. And that map would be the AY-1 map?

24

1 A. Yes, it would.

2 Q. Okay. And have you filed proof of
3 publication today with...with the Director and proofs with
4 regard to mailing?

5 A. We have filed those.

6 Q. I take it in AX-135, you don't want to
7 dismiss or add anybody?

8 A. No.

9 Q. Okay. With regard to AW-124, there was a
10 packet distributed to the Board today of amended exhibits,
11 correct?

12 A. It is. Correct.

13 Q. And there is an Exhibit B-2 in that packet,
14 correct?

15 A. Yes.

16 Q. And that would deal with...with parties that
17 you might want to dismiss today?

18 A. Yes, it is.

19 Q. Okay. And what is the reason that the
20 parties are being dismissed?

21 A. They were leased.

22 Q. Okay, so between the time that you filed
23 this application, which would have been in December, I
24

1 guess...well, no, in November, correct?

2 A. Uh-huh. Yes.

3 Q. And today, you've leased a number of people?

4 A. Yes, we have.

5 Q. And those folks are listed in B-2 and you're

6 seeking to have them deleted or dismissed as respondents

7 because they have, in fact, entered into agreements?

8 A. They have.

9 Q. Okay. Is the revised Exhibit B-3 that we

10 have essentially an exhibit that then extracts those leased

11 parties?

12 A. Yes, it is.

13 Q. Okay. Revised Exhibit A, page

14 two...actually, let's leave off with that for one moment.

15 Both of these units are Middle Ridge units?

16 A. Yes, they are.

17 Q. Okay. And do both of them contain 58.74

18 acres?

19 A. Yes.

20 Q. Okay. In AW-124, there is one well proposed

21 and it's in the drilling window?

22 A. Yes.

23 Q. I notice that in AX-135, the plat that was

24

1 filed with the application, I do not believe has a well
2 location shown on it.

3 A. I'll have to revise that.

4 Q. Okay. Do you have your permitting
5 information with you? I think this well has been drilled.
6 SO, you can give the Board an idea where that well is.

7 A. We'll have to revise the plat.

8 Q. Okay.

9 A. The permit...the well is in the southeast
10 corner of the drilling window.

11 Q. Okay. And will you then file a revised plat
12 that locates the well on the plat?

13 A. Yes, we will.

14 Q. Okay. Is it in the window?

15 A. Yes, it is.

16 Q. Okay. So, it was surveyed to be in the
17 window?

18 A. Yes, it is.

19 Q. Okay. And it would be in the extreme
20 southeast corner of the drilling window?

21 A. It is.

22 BENNY WAMPLER: Do you have that located on that
23 plat you're looking at?

24

--

1 LESLIE K. ARRINGTON: Yes, I do.

2 BENNY WAMPLER: Would you just hold it up for the

3 Board to look at.

4 MARK SWARTZ: Can you point that out, Les?

5 LESLIE K. ARRINGTON: Yes. It's in the southeast

6 corner of the drilling window.

7 MASON BRENT: This has been permitted?

8 LESLIE K. ARRINGTON: Just a minute.

9 MARK SWARTZ: Yes.

10 LESLIE K. ARRINGTON: Yes, it is.

11 MARK SWARTZ: I think it's...it's permit 5910,

12 correct, Les?

13 LESLIE K. ARRINGTON: Yes, it is.

14 Q. What lease terms would you propose to the

15 Board to be incorporated in its orders?

16 A. Our standard coalbed methane lease terms are

17 a dollar per acreper year with a five year paid up term and

18 a one-eighth production royalty.

19 Q. And this...these units would produce coalbed

20 methane...be proposed to produce coalbed methane gas from the

21 Jawbone on down if the Jawbone is, in fact, below drainage?

22 A. That's correct, we are.

23 Q. And these...each of these wells would be a

24

1 frac well?

2 A. Yes.

3 Q. And you're only proposing one well per unit?

4 A. That's correct.

5 Q. And neither requires a location exception?

6 A. Correct.

7 Q. Turning back to AW-124 again, and looking

8 at...focusing primarily on the revised exhibits. Could you

9 tell the Board what you're seeking to pool, and compare that

10 to what you have acquired?

11 A. Yes. We have...we have acquired in AW-124,

12 95.7440% of the coal owner's claim to coalbed methane, and

13 89.4654% of the oil and gas owner's claim to coalbed methane.

14 We're seeking to pool 4.256% of the coal owner's claim and

15 10.5346% of the oil and gas owner's claim.

16 Q. There's an Exhibit E attached.

17 A. Yes.

18 Q. And that would indicate that there's some

19 escrow requirements, correct?

20 A. Yes.

21 Q. And there are actually a number of reasons

22 for escrowing this unit. First of all, we've got unknown

23 people in Tracts 2E and 3, is that correct?

24

1 A. Let me look at 3. 2E for sure and 3.
2 Q. Okay. Then we have a title issue that has
3 not been...you haven't been able to resolve in three of the
4 tracts and those would be 2C as in Charles, 2D as in David,
5 and 2E as in Edward, is that correct?
6 A. Okay. Yes.
7 Q. Okay. And then we have conflicts, which
8 would mean that we have different folks owning or claiming
9 coal as opposed to oil and gas in the following tracts: 1B,
10 as in boy, 1E as in Edward, 1F as in Frank, 1H Henry, 2A
11 Apple, 2B boy, and 2D for David?
12 A. In conflicts. 2C.
13 Q. We've also got a 2C? Yep. Also, I should
14 add 2C to that, correct?
15 A. Yes.
16 Q. Okay. Other than that, is that correct?
17 A. Correct.
18 Q. Then I also notice that with regard to AW-
19 124 in the revised exhibits that you filed today, you have a
20 revised Exhibit EE, correct?
21 A. We do.
22 Q. And that would indicate that certain parties
23 have reached agreements that would allow them to receive
24

--

1 their money rather than litigating their differences?

2 A. That's correct.

3 Q. And are you asking that the Board allow the
4 operator with regard to AW-124, if it is pooled, to pay these
5 people listed in Exhibit EE directly rather than escrowing
6 their funds?

7 A. Yes, we would.

8 Q. The...what is the well cost estimate with
9 regard to AW-124?

10 A. \$242,864.06, estimated depth is 2482, permit
11 number is 5784.

12 Q. Now, turning to the...AX-135 unit, okay,
13 there are no amendment exhibits with regard to this unit?

14 A. Correct.

15 Q. What is the well cost estimate and other
16 information on this unit?

17 A. The estimated cost is \$227,571.08; the
18 estimated depth of 1,860 feet. The permit number is 5910.
19 We have leased in this unit 100% of the coal owner's claim to
20 coalbed methane. We have 55.3286% of the oil and gas owner's
21 claim to coalbed methane. We're seeking to pool 44.6714% of
22 the oil and gas owner's claim to coalbed methane.

23 Q. In this unit, there would be an escrow
24

1 requirement just with regard to Tract 2 conflicts?

2 A. Yes.

3 Q. And there's an Exhibit EE attached?

4 A. It is.

5 Q. And are you requesting that the Board allow
6 you to pay the people listed in Exhibit E...EE, I'm sorry,
7 directly rather than escrowing their funds because they have
8 entered into royalty split agreements?

9 A. Yes.

10 Q. Okay. With regard to both of these units,
11 is it your opinion that the plan of development that is
12 disclosed by the applications and the plats, which is to
13 drill one frac well in each unit, is a reasonable plan to
14 develop the coalbed methane resource within and under these
15 units be the benefits of...benefit of the owners and
16 claimants?

17 A. Yes, it is.

18 Q. Okay. And will the proposed wells in these
19 two units contribute to the protection of the correlative
20 rights of the owners of the methane within and under these
21 units and lessen the likelihood of both physical waste and
22 economic waste?

23 A. Yes, it will.

24

--

1 MARK SWARTZ: That's all I have, Mr. Chairman.

2 BENNY WAMPLER: Questions from members of the

3 Board?

4 JIM MCINTYRE: What's the difference between a

5 title problem and a conflict? I know...I know what a title

6 problem is. But I don't understand when you say conflicts

7 out of those Tracts 1B through 2D.

8 MARK SWARTZ: Okay. If you just...which units are

9 you looking at or which...which exhibits are more convenient

10 to you?

11 LESLIE K. ARRINGTON: He's looking at the

12 spreadsheet.

13 JIM MCINTYRE: I'm looking at your spreadsheet here

14 and I've made notes---.

15 MARK SWARTZ: Right.

16 JIM MCINTYRE: ---on there where you gave AW-124

17 you showed Tracts 1D---.

18 MARK SWARTZ: Okay.

19 JIM MCINTYRE: ---E, F, H.

20 MARK SWARTZ: Okay. If you would grab this packet.

21 JIM MCINTYRE: Okay, I got it.

22 MARK SWARTZ: And then find Exhibit E, which is

23 kind of toward the middle.

24

1 JIM McINTYRE: Okay.

2 MARK SWARTZ: Actually, if you look at Tract 1B, we
3 can use that to illustrate what we're talking about. It
4 would be the first page actually. Page one of 28 of Exhibit
5 E.

6 JIM McINTYRE: All right.

7 MARK SWARTZ: Okay. You'll notice there's a coal
8 fee owner, which is Sword's Creek.

9 JIM McINTYRE: Right.

10 MARK SWARTZ: They have a claim to coalbed methane
11 based on their coal ownership, okay. Then there's an oil and
12 gas owner and there are actually two people there. But those
13 folks are folks that would have a claim to coalbed methane
14 based on owning the oil and gas. That's the conflict, okay.

15 JIM McINTYRE: Okay, I gotcha.

16 MARK SWARTZ: And then in this...in this...this
17 just happens to be a lucky example, the oil and gas fee
18 ownership here we do have a title issue as well. So, we've
19 got both in that. But that's the different.

20 JIM McINTYRE: Right.

21 MARK SWARTZ: It's...it's what...what is the
22 mineral interest that you claim to coalbed methane derives
23 from and that's what creates the conflict if there has been a
24

1 severance of the coal and oil and gas.

2 JIM MCINTYRE: Right. Gotcha.

3 MARK SWARTZ: So, that comes up a lot. But that's

4 the reason.

5 JIM MCINTYRE: All right. Thank you.

6 MARK SWARTZ: Okay.

7 BENNY WAMPLER: Other questions from members of the

8 Board or comments?

9 (No audible response.)

10 BENNY WAMPLER: Do you have anything further?

11 MARK SWARTZ: No.

12 BENNY WAMPLER: Is there a motion?

13 MASON BRENT: Mr. Chairman, I move that we grant

14 these two applications?

15 BILL HARRIS: Second.

16 BENNY WAMPLER: Motion and second. Any further

17 discussion?

18 (No audible response.)

19 BENNY WAMPLER: All in favor, signify by saying

20 yes.

21 (All members signify by saying yes.)

22 BENNY WAMPLER: Opposed, say no.

23 (No audible response.)

24

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1 BENNY WAMPLER: You have approval. The next item
2 on the agenda is a miscellaneous petition from the Linkous
3 Horn heirs to appear before the Gas and Oil Board to address
4 concerns regarding S-35, S-36, S-37, T-36 and T-37 located in
5 the Oakwood I and II coalbed methane fields, docket number
6 VGOB-03-1118-1232. We'd ask the parties that wish to address
7 the Board in this matter to come forward at this time. Scoot
8 him down, Anita. Pull that chair around.

9 PETER KLUBIAK: I don't want to bump Mr. Swartz out
10 of the way...familiar with it than I am.

11 BENNY WAMPLER: That's all right. I'll bump him.

12 BENNY WAMPLER: Parties state their names for the
13 record starting with Mr. Klubiak.

14 PETER KLUBIAK: Yes, good morning, Mr. Chairman,
15 Mr. Wilson and members of the Board. My name is Peter
16 Klubiak. I am an attorney practicing in King William,
17 Virginia. Before you go to the maps, that's a long way from
18 here. I have a legal assistant who is from Grundy. That's
19 how I got involved in this whole thing. I do not profess to
20 be...Mr. Swartz has forgotten more about this than I will
21 ever know. I also am the Plaintiff's Counsel in the Ratliff,
22 Harrison and Wyatt decision, which was argued before the
23 Virginia Supreme Court last week. I will talk about that in
24

1 a minute in terms of some concerns I have with regard to
2 Board procedures and I think administrative headaches that
3 certainly Mr. Wilson and I have talked about for some time in
4 the event...in the hoped for event that the Supreme Court
5 chooses to affirm Judge Williams and determine that absent
6 the severance of the minerals, the coalbed methane would be
7 owned by either the surface owner or the gas and oil owner,
8 and in many cases, those would be the same parties.

9 For purposes of this particular matter, more
10 specifically, I'm here representing a group of the Linkous
11 Horn heirs with regard to a number of wells and units which
12 were listed on Mr. Kenneth Osborne, who is seated to my left,
13 and his petition which was filed some time ago. I appreciate
14 the Board's patience with regard to the continuance in
15 December. We are here today just to discuss a number of what
16 we feel to be more informational issues and discrepancies in
17 the records that may well be there is an answer out there but
18 we're not aware of them.

19 Let me start first with a simple illustration of
20 the point I think Mr. Osborne has been trying to make.

21 BENNY WAMPLER: Let me...let me stop you---.

22 PETER KLUBIAK: Sure.

23 BENNY WAMPLER: ---and just get Mr. Osborne's name
24

1 for the record if he's going to be your witness---.

2 PETER KLUBIAK: Sure.

3 BENNY WAMPLER: ---and if he is, we'll need him
4 sworn in.

5 PETER KLUBIAK: Yes. Yes, sir.

6 KENNETH OSBORNE: Good morning, Mr. Wampler, Mr.
7 Wilson and the Board members. I'm Kenneth Osborne and
8 designated spokesman for the Linkous Horn heirs.

9 BENNY WAMPLER: I need you to raise your right hand
10 and get you sworn in.

11 (Kenneth Osborne is duly sworn.)

12 PETER KLUBIAK: Mr. Osborne, could---?

13 BENNY WAMPLER: Just a second.

14 PETER KLUBIAK: I'm sorry.

15 BENNY WAMPLER: Mr. Swartz, go ahead and---.

16 MARK SWARTZ: Mark Swartz and Les Arrington.

17 BENNY WAMPLER: Thank you. Now, you may proceed.

18 PETER KLUBIAK: I'm sorry.

19 BENNY WAMPLER: That's okay.

20

21 KENNETH OSBORNE
22 having been duly sworn, was examined and testified as
23 follows:
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DIRECT EXAMINATION

QUESTIONS BY MR. KLUBIAK:

Q. Mr. Osborne---?

A. Yes.

Q. -----can you very briefly, I know you've appeared before this Board before, just identify your connection with these matters, please?

A. Again, I'm the designated spokesman for the Linkous Horn heirs. Going over the package that is with many different things such as land locations, deed...surveillate ..surveyor lines, so on and so forth, I've found a lot of discrepancies in them. I'm just trying to get some answers.

Q. Mr...Mr. Osborne, let's turn right for a second to what I was talking about, illustration. There's a comment that you make in one of your points in your appeal with regard to unit, specifically S-37. I think what I would like you to do, I'm going to have you discuss...I'm handing you copies of what is the...an item on the agenda for today. In fact, it was continued with regard to S-37, and that being a pooling order sought by CNX Gas Company with regard to S-37. Is this a copy of the petition...I'm sorry, notice of hearing and application that you received? It was dated for hearing on December the 16th, 2003?

1 A. Yes, sir.

2 Q. And on that...in that particular package,
3 there is a map of the unit itself.

4 A. Yes, sir.

5 Q. And in that unit, how many wells are
6 identified?

7 A. In this particular unit, it only identifies
8 two wells. Wells---.

9 Q. What wells are those?

10 A. The wells would be S-37 and S-37B.

11 Q. And I'm handing you next a Board order which
12 was sent, and it's dated May the 10th of 2000, with regard to
13 S...unit S-37, and I'm referring your attention to the
14 document that's of record in apparently Deed Book 586, Page
15 386, wherein you have a number of wells marked. Can you talk
16 about that?

17 A. Yes, sir. In this plat map, it describes
18 three wells, being unit S-37, S-37B, S-37A.

19 Q. And referring back to the most recent
20 application regarding the force pooling unit and the plat
21 which was attached to the December application, is there any
22 indication on that map, to your knowledge, of S-37A?

23 A. No, sir, there's not.

24

1 Q. And have you received documents from the Gas
2 and Oil Board with regard to the Linkous Horn ownership in
3 37-A?

4 A. Yes, I have.

5 Q. Without belaboring the point, is that the
6 kind of discrepancies you have asked about on many occasions?

7 A. Yes, sir.

8 Q. Thank you very much.

9 A. Yes, sir.

10 Q. You make a comment here with regard to
11 different reports being signed by different, or apparently
12 different, signatures for different lab officers. Can you
13 tell me specifically what reports you're talking about?

14 A. On several packets, this particular one S-
15 35A and S-36, in the application was submitted to the
16 Board...when the application for permit was submitted to the
17 Board they done a...I'm not for sure what the test was, but
18 it was a lab report showing consistencies of sediment and
19 different, I guess, the rock structures and so on and so
20 forth. There's a section on there where there's a Mr.
21 Kenton's signature and it recognizes him as a lab officer.
22 It states on there that all the information is true and
23 correct to the best of his knowledge. But on the S-36, I've

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--

1 got Mr. Kenton's signature again and you can tell there's a
2 difference in the two signatures. It bears the same name,
3 but the same person did not sign the signature. I have that
4 on...it's three different reports on that. But to bring up
5 real quick, S-35A and S-36.

6 Q. Okay. Let's turn for a second to boundary
7 issues. There's an indication on here that you say there's a
8 dispute about boundaries that was brought to the attention
9 with regard to S-36 and to your knowledge, the property lines
10 have never been adequately determined such that the plats
11 used in the force pooling application are of little or no
12 value.

13 A. Yes, sir. This particular...this was
14 brought forth in front of the Board. It was first brought up
15 by Mr. Danny McClanahan. This was a situation where Claude
16 Morgan had submitted the plat maps, stating that and
17 attesting that they were, in fact, surveyed and, in fact, we
18 brought it in front of the Board that they were not surveyed.
19 There has been several different Orders from the Board where
20 they tried to correct this problem. There's also a point
21 there that the escrow account was suspended. The monies for
22 this escrow account were suspended because of this problem,
23 also. To my knowledge, I haven't any different that this...

24

--

1 this problem has been...the boundary line issue has been
2 fixed yet.

3 Q. And this affects your...your group of
4 relatives and representatives because it affects the accurate
5 escrow account?

6 A. Yes, sir, because in the percentages on
7 several different...from the applications that were
8 submitted, we've got several different percentages listed for
9 the Linkous Horn Heirs. So, at this point, I'm not quite
10 sure what our percentage is. You know, I don't understand
11 how there can be an accurate account in the escrow account if
12 no one is clear on the percentage.

13 Q. And finally I want to talk for a second
14 about, you've made an objection whether it's properly before
15 the Board or not, I guess the Board will have to determine,
16 but this issue of the modification of field rules which has
17 come out on a couple of occasions. I know, as a
18 representative, you have a fairly strong feeling about that.

19 A. Yes, sir.

20 Q. Could you explain to the Board why you're
21 concerned about this modification of field rules?

22 A. My concerns is if these...these...the field
23 rules have already been established. The escrow accounts,

24

--

1 the applications have already been submitted and approved by
2 the Board. The percentage in escrow accounts have already
3 been set. So, I don't understand the reason for repooling
4 those. My understanding, it's to add more wells. But, I
5 mean, I don't see how that benefits the heirs. I certainly
6 don't see how we can get an accurate account especially after
7 the escrow accounts have already been made. Then if you go
8 in and if you add more wells and if it's even just a few feet
9 from one line to the other. Then how do you determine whose
10 gas you're pooling and who gets this percentage, who gets
11 that percent? I just don't understand. All I see is a lot
12 of headache from it. I don't understand the reason for
13 repooling something that has already been pooled.

14 Q. Along those lines, I've got a specific
15 question. Virginia Gas and Oil Act 45.1-361.27.A7 says that
16 the Gas and Oil Board is to provide for the accurate...or
17 insure to provide...and provide for the accurate measurement
18 of gas and oil production and delivery to the first point of
19 sale. Have you expressed concerns regarding the accounting
20 and the accurate measurement of gas and oil production at the
21 wells in which your family has an interest?

22 A. Yes, I have.

23 Q. And what is your concern?

24

--

1 A. My concern is if, and with all due respect
2 to Mr. Swartz, Mr. Arrington, CNX/Consol, I don't understand,
3 if they just submit a figure and say this was pooled from
4 this well head this month, nobody goes back and nobody checks
5 these figures and they accept those figures as they're
6 submitted in and that's the bottom line on it. Then when you
7 look at these percentages and you look at how much the amount
8 of the 1000 cubic feet is pulled out of the ground and then
9 you look at these escrow figures, which don't even come close
10 to adding up. My concern is if nobody regulates these
11 figures that are turned in, how do we...how do we know...how
12 do the heirs, the individuals, how do they know that this is
13 a proper and correct accounting?

14 PETER KLUBIAK: Thank you. Mr. Chairman, I have
15 just two or three quick comments to make and then I'm sure
16 Mr. Swartz has a position.

17 BENNY WAMPLER: That's fine.

18 PETER KLUBIAK: My comments don't address these
19 specifically, but I can't really pass up the opportunity to
20 take a minute or two of your time. As I noted before, if the
21 Supreme Court schedule is kept to, it can be expected that
22 there will be a decision rendered on or about the March the
23 5th is the date that the Court gives on its web site. In the
24

1 event that the Supreme Court chooses, as I certainly hope, to
2 affirm Judge William's decision, that will be Friday and on
3 Monday it is my full expectation, and it's no surprise to Mr.
4 Wilson, he and I have talked on numerous occasions that
5 you're going to have to find six or eight more switchboards
6 to handle the calls and the people lined up at the door for
7 their check.

8 One of the things I would ask this Board as
9 literally the experts designated by the Governor and by the
10 State to deal with these issues to address...you've got a
11 couple of months, well actually in this case, you may have
12 five or six weeks. But it is my strong belief that under the
13 statute, that in the event the Supreme Court affirms Judge
14 Williams, unfortunately that is not the end of the story.
15 The statute is quite clear in seeking...you must present a
16 final judicial determination with regard to your interest.
17 Mr. Wampler and I were talking briefly beforehand. I don't
18 know. I've talked to Mr. Wilson about it. We're going to
19 take some measures if we can. But I would suspect we're
20 talking about a thousand plus individual potential claimants.
21 Some of whom, unfortunately, may be entitled to five dollars
22 or twenty-five cents. Some of who, however, may have several
23 thousand to ten to twenty to fifty thousand dollars, a not

24

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1 inconsiderable sum.

2

3 However, it is not going to be as easy as most
4 people think it's going to be, which is what about this Court
5 decision and what about this newspaper article, what's going
6 to happen? I would strongly encourage you, the AG's office,
7 et cetera, to investigate whether, in fact, there may be some
8 procedure. Judge Williams was concerned about this over two
9 years ago when he...when he heard the case and rendered the
10 opinion. It is simply not going to be a working scenario to
11 file five hundred declaratory judgment actions on a Monday in
12 Buchanan Circuit Court and expect any semblance of a
13 reasonable procedure. There is precedent. There are items
14 out there. There are Commissioner's procedures. There are
15 lots of different ways this possibly could be done. As I see
16 it, it's simply a matter...if, in fact, the Judge William's
17 decision is affirmed, it is simply a matter insofar as you're
18 concerned for the escrow account, to get an Order. How that
19 Order is rendered is really the issue. Is it going to take a
20 full blown Court hearing or can there be some expedited
21 procedure whereby people can simply file their severance
22 deeds and their vesting deed or their fee simple deed in the
23 property, establish that they are, in fact, the owner of the

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1 property and the owner of the oil and gas absent the
2 severance of coal, and only coal. I know we're going to have
3 a lot of upset...you're going to have a lot of upset people
4 out there. Mr. Frank Kilgore and I had a brief informational
5 meeting at the Appalachian School of Law in Grundy in June
6 and we had over 400 people. I would dare say 90% of whom,
7 unfortunately, when they came out to talk to us, had
8 severance deeds containing coal and minerals. Now, those
9 people are going to be upset, but there's not a whole lot I
10 can do about it nor you can do about it. But there's still a
11 whole lot of people out there who have coal only deeds,
12 severance deeds, and they're going to want their money. I
13 would encourage either in public hearing or in correspondence
14 or working in conjunction with the AG's office and
15 potentially the courts. We've only got a one...really one or
16 two circuits that we're dealing with in terms of how they
17 best want to proceed because I hate to see a flood of these
18 cases come in and people standing here yelling and you've got
19 to explain a hundred times that that has to happen. I would
20 encourage you perhaps something as simple as a press release
21 if the decision comes out so that the local papers will make
22 sure that people understand that it isn't as simple as
23 running down and getting your check. Mr. Wilson is the

24

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1 one...I keep looking at him who is going to be locking his
2 door on that Monday and turning off the phones. But it is an
3 issue and it's a real issue. This is not your money. It's
4 not my money. It belongs to these folks, if that's the
5 decision of the Supreme Court. Your job, and probably a
6 critical part of your job, is making sure that as much of
7 that money gets out the door to the people who really it
8 belongs to as quickly as possible.

9 The only other comment that I'd have to make, and
10 I'd echo Mr. Osborne's comments, that is that I think under
11 that particular code provision I read and various regulations
12 which govern the Board, I understand the restrictions in
13 terms of staffing and the restrictions in terms of time and
14 energy and money. However, I would...I would simply state
15 that, for what it's worth, I think the escrow account that
16 Mr. Wilson just read approximately 8.1 million dollars is
17 considerably short of where it accurately should be. We will
18 certainly address that at the time that that is appropriate.
19 Right now, we are one of two combatants who claim in this.
20 But in the event we prevail, we certainly will be back
21 talking about how we can ask the Board to better regulate and
22 better administer the production figures and the accounting
23 that happens. I've got a decent understanding of exactly
24

1 what happens. I'm just not altogether sure that the
2 oversight is where it could be or maybe needs to be.

3 So, with that, I appreciate your time very much.
4 I'm not familiar whether there's cross examination by Mr.
5 Swartz or he---.

6 BENNY WAMPLER: There will be. But I'll first give
7 the Board an opportunity to ask any questions or make any
8 comments. Of course, as you're very much aware, the Virginia
9 Statute does protect those parties that can come forward with
10 a Court ruling. Yes, it will...as you also are very familiar
11 with the case that went up to the Virginia Supreme Court is a
12 case that was deed specific. Therefore, all other
13 presentations to the Board will need to be deed specific to
14 show proof of ownership. As you've correctly pointed out,
15 that will be a large task if the ruling isn't in favor, or
16 upholds Judge Williams. We're certainly mindful of that and
17 appreciate the reminders and the suggestions. Any comments
18 or questions from members of the Board of this witness or
19 these comments that Mr. Klubiak has made?

20 (No audible response.)

21 BENNY WAMPLER: Mr. Swartz.

22

23 LESLIE K. ARRINGTON

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1

DIRECT EXAMINATION

2 QUESTIONS BY MR. SWARTZ:

3 Q. Mr. Arrington, we heard some comments with
4 regard to a well S-37A. Did you hear that?

5 A. Yes, I did.

6 Q. Can you tell the Board whether or not S-37A
7 was ever drilled?

8 A. No, it wasn't.

9 Q. Okay. We also heard some comments with
10 regard to water testing. Do you recall that?

11 A. Yes.

12 Q. Who does your water testing?

13 A. EMI.

14 Q. Okay. Is that a separate company?

15 A. Yes, it is.

16 Q. Okay. Do you have any knowledge of
17 signatures on their documents?

18 A. They supply us with their documents. I
19 don't pay any attention to the signatures.

20 Q. Okay, you look at the data?

21 A. Yes, I do.

22 Q. Okay. When would you submit water testing
23 data?

24

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1 A. During the permitting process.

2 Q. Okay. And, obviously, that's a process that

3 occurs in front of Mr. Wilson---?

4 A. Yes, it is.

5 Q. ---in his office, correct?

6 A. Yes, it is.

7 Q. Okay. Let's...let's turn to the boundary

8 issue in S-36, okay.

9 A. Yes.

10 Q. Do you recall being here in front of the

11 Board on at least a couple of occasions dealing with...with

12 complaints from a Mr. Danny McClanahan?

13 A. Yes, we were.

14 Q. Okay. And that...specifically one of the

15 things that he was...Mr. McClanahan was complaining about was

16 this S-36 map, correct?

17 A. I believe it was S-36 and one other one.

18 Q. There was some others?

19 A. Yes, there was.

20 Q. But S-36 was certainly one of them?

21 A. Yes.

22 Q. Okay. And do you recall if there was

23 Linkous Horn heirs present at those hearings?

24

1 A. Yes, there was.

2 Q. Okay. And was the boundary a matter of
3 dispute in front of this Board during those hearings
4 concerning S-36?

5 A. Yes, it was.

6 Q. Okay. And was the Board and the parties
7 able to resolve that boundary argument?

8 A. No.

9 Q. Okay. What was the solution to the boundary
10 argument?

11 A. Mr. McClanahan made a claim to certain oil
12 and gas interests, a conflicting claim you would say to
13 certain interest there.

14 Q. Okay. And...and those...his claim was in
15 conflict with the title of the Linkous Horn heirs, correct?

16 A. Yes, it is.

17 Q. And essentially Mr. McClanahan was
18 contending that his line went over onto the Linkous Horn's
19 property as described in their deeds?

20 A. Yes, that was a portion of it. Yes, it was.

21 Q. Okay. And, in fact, people from your
22 company went out into the field and conferred with Mr.
23 McClanahan to try and locate his boundary on the ground?

24

1 A. Yes, we did.

2 Q. Okay. And was the solution to that argument
3 to carve out the tract or the sliver of land that was in
4 dispute?

5 A. Well, yes, it was.

6 Q. Okay. And then that sliver of land was
7 marked as a disputed boundary tract and the funds that would
8 otherwise be paid to the Linkous Horn heirs were escrowed
9 because of Mr. McClanahan's complaints?

10 A. It was.

11 MARK SWARTZ: Okay. And I don't know if you
12 guys...if the Board has this map handy. But there was
13 actually, I don't know if you can see this well---.

14 MASON BRENT: Was that S-36 you're talking about?

15 MARK SWARTZ: Yes. There was...I've outlined this
16 in blue here. But there was...this boundary that was in
17 dispute was in this location on S-36. You can see that it
18 proceeds into the tracts below. What we did is we created,
19 and this was over the course of several months, this
20 argument---.

21 BENNY WAMPLER: Let me just tell the Board, that's
22 in item number four---.

23 MASON BRENT: Yeah, I've got it.

24

1 BENNY WAMPLER: ---as Exhibit A that was before us
2 today. If you have that handy to look at the map he's
3 referring to, excuse me.

4 MARK SWARTZ: And...and, you know, to deal with
5 that...that argument that Mr. McClanahan was having with the
6 Linkous Horn heirs, that Tract 3C1 was created. I mean, it's
7 not a deeded tract. It's a tract that encompasses the
8 boundary area that's in dispute and those funds have been
9 escrowed as a result of that.

10 LESLIE K. ARRINGTON: And he also made a claim to
11 the coalbed methane by a surface claim in Tract 3C.

12 MARK SWARTZ: Right.

13 LESLIE K. ARRINGTON: So---.

14 MARK SWARTZ: Right. There was...there were two
15 claims that Mr. McClanahan made. I think we sort of...you
16 may have some questions, but the one was that we had the
17 boundaries wrong. When you looked at the Linkous Horn deeds,
18 they were really not consistent with what Mr. McClanahan was
19 telling us. But he was claiming a boundary dispute.
20 Unfortunately, we can't resolve those.

21 In addition, Mr. McClanahan had an extended
22 argument with everyone about whether or not he had a claim to
23 coalbed methane under the terms of his deed.

24

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1 LESLIE K. ARRINGTON: That's correct.

2 MARK SWARTZ: And that claim would have been larger
3 than this boundary dispute. So, that caused a further
4 argument with regard to whether or not funds needed to be
5 escrowed in a larger area. So, the escrow that resulted from
6 the debate that was initiated by Mr. McClanahan, and it
7 involved the Linkous Horn heirs in S-36, for example,
8 resulted in escrow for two reasons: A boundary dispute and a
9 conflicting claim of, you know, "I am a surface owner but I
10 own your coalbed methane," is what Mr. McClanahan was
11 essentially saying.

12 So, that's the explanation for the additional
13 tract, for the boundary dispute and for the escrow there.
14 My, and this would be simply my observation, you know, if you
15 have a dispute with another owner, the way to resolve that is
16 to settle it with that owner or go to court with that owner.
17 We've...you know, we've...we're escrowing those funds.
18 They're going to go to somebody. We don't have an ability,
19 nor do you, to resolve this dispute. But that's how the
20 orders...that's the reason the orders were entered as
21 they...as they were on S-36. It has been a couple of years.
22 But Mr. McClanahan is a pretty exciting guy. You know, so I
23 have a distinct recollection of this.

24

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1 With regard to---.

2 (Mr. Arrington confers with Mr. Swartz.)

3 MARK SWARTZ: Right. And the unit below is T-36
4 just for purposes of reference. So we've got the
5 same...precisely the same issue in T-36, which I think was
6 also a subject of the Linkous Horn heirs' miscellaneous
7 petition.

8 With regard to modification of field rules, and I'm
9 not sure if it's just modification of field rules or
10 repooling under Oakwood II as well. I'm not sure. It may
11 have been. You know, the time to be before the Board on
12 modification of field rules is when we're having hearings to
13 modify field rules. You know, if the subject under
14 discussion is the modification of a group of units in the
15 southern portion of the Oakwood field that abutted the Middle
16 Ridge, and I'm not sure that that's the case. But if that's
17 what we're talking about---.

18 BENNY WAMPLER: Well, here is what he is...here is
19 what he said in his statement of issue, and certainly you can
20 clarify that if further clarification as needed. Said, "I
21 would like to address the issue of Consol asking for a
22 modification of field rules to reduce the 80 acre units that
23 are already established with escrow accounts and conflicting
24

1 claimants to 60 acre units. Again, how could there be an
2 accurate accounting being that it has already been
3 established rules."

4 MARK SWARTZ: Okay. Well, then that is the
5 increased density drilling that was permitted in that group
6 of units. You know, there is an extensive record that was
7 made, the transcript would be available. I think we were
8 here two or three times and talked about it probably for
9 hours. You know, so if you wanted to understand what the
10 Board had in front of it at that time and understand the
11 questions that the Board put to us, the witnesses and the
12 exhibits, I mean, I'm sure there is hundred...hundreds of
13 pages of transcript with regard to that. I mean, the Board
14 as I recall had a number of options. Frankly, you solved the
15 problem in a way that met its needs that really wasn't a way
16 that we had come to you with. So, I mean, you designed a
17 solution to deal with the problem. I think we convinced you
18 there was a problem. But you designed your own solution
19 rather than taking our solution.

20 To answer the question that I heard this morning as
21 to how does adding more wells benefit anybody? I mean, I
22 think that was the point of discussion by Mr. Osborne. Well,
23 if...if more wells are producing gas, there is more gas to be
24

1 sold. Now, that is not a concept that, you know, that you
2 could just say drill a million wells. I mean, there's a
3 point in time at which the cost benefit analysis goes away.
4 But if there is sufficient gas to support a drilling program
5 to drill additional wells, it benefits the people who drill
6 the wells because it's a return on their capital investment
7 and it benefits the royalty owners because they get their
8 royalty sooner and they get more royalty in a shorter period
9 of time. So, the benefit associated with more wells is more
10 gas sales.

11 With regard to gas measurement...you know, you
12 might want to put me under oath here.

13 (Mark Swartz is duly sworn.)

14

15 MARK SWARTZ: The way that Consol measures gas in
16 both directions, which I think people may not be aware of,
17 there is...there is attention to measuring gas where it is
18 produced. But the sales records, okay, at the sale point,
19 those volumes are then allocated back to the well so that you
20 actually account for every dollar of gas sales. It's not
21 just a one way street. So, I mean, you could make an
22 argument that metering was a problem. But the difficulty
23 with making that argument under the way in which Consol

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1 internally accounts, or CNX internally accounts for its
2 revenues, is it takes the gross revenues and the gross sales
3 at the various sales points and then works those numbers back
4 to the wells, and that's how they...the well dollars are
5 actually calculated. It accounts for two problems.
6 Amazingly there are months in which our gas sales exceed our
7 recorded volumes that were produced, okay. Line loss and
8 other losses in gathering and compression is a known concept.
9 In some months, you know, the sales are less. So you need
10 to account for that. So, it's a two way street. There's an
11 upstream accounting and then there's a downstream accounting
12 of the actual dollars. Their system is designed to account
13 for 100% of the revenue from gas sales at the sales point.
14 So, basically you're dealing with a fairly small number of
15 meters that are highly accurate, which they then work back to
16 allocate to the individual wells. That's how this works.
17 It's a pretty complicated process. But it is not a meter at
18 a well that determines the outcome process. It's...there are
19 other meters in the system that are also metered in groups of
20 wells. But it...the biggest point that I would like to make
21 is that the dollars all get allocated back and they are
22 accounted for in revenue assigned to the wells.

23

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1 DIRECT EXAMINATION RESUMES

2 QUESTIONS BY MR. SWARTZ:

3 Q. Les, have I summarized that as it actually
4 occurs?

5 A. Yes, it is. Yes, you have.

6 MARK SWARTZ: With regard to Mr. Klubiak's comments
7 on, you know, the anticipated effect of the decision, I mean,
8 I don't really have anything in response to that. But I have
9 tried to, you know, give you Les' views and/or mine with
10 regard to the five items that I heard that were...that were
11 brought to your attention today. That's all I have.

12 BENNY WAMPLER: All right. Thank you. Mr.
13 Klubiak.

14 PETER KLUBIAK: Certainly. I have two brief
15 questions.

16

17 CROSS EXAMINATION

18 QUESTIONS BY MR. KLUBIAK:

19 Q. Mr. Arrington, if I understood you
20 correctly, the answer to Mr. Osborne's discussion of this S-
21 37 unit whether it's 37A, 37B or 37, is that 37A was never
22 drilled?

23 A. Correct.

24

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1 Q. So, there has been no production from S-37?

2 A. We may have permitted it. We permit wells
3 at times and never---.

4 Q. Well, I would like to show your Counsel and
5 have him show you a report from Mr. Wilson's office with
6 regard to the escrow amounts showing that escrow is currently
7 held in and is allocated to S-37A of \$5310. I would like you
8 to explain for the Board and for me, frankly, if there's an
9 allocation for a well and it hasn't been drilled, is that
10 just a reporting error or is there a problem?

11 A. I can't answer you because S-37A has not
12 been drilled. I have my summary sheets here for the well
13 volumes of that well for the amounts attributable to that
14 well and there is not an S-37A.

15 BOB WILSON: Mr. Chairman?

16 BENNY WAMPLER: Mr. Wilson.

17 BOB WILSON: Let me clarify something possibly.
18 Number one, I think this is maybe at the root of some of the
19 erroneous thinking. The escrow account is only kept to the
20 unit level, the docket number level. In other words, S-37
21 could have had one well or could have fifteen wells in it,
22 but it would still only one S-37 account. Now, as to why
23 that has an A on it, I couldn't tell you that. But there is

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1 no separate account for additional wells within the same
2 unit. In other words, S-37, S-37B and if S-37A had been
3 drilled, all of those would be in the same total and reported
4 under the same docket number.

5 PETER KLUBIAK: So, if I understand it, Mr. Wilson,
6 if we looked, there would be no S-37...well...here is a
7 pretty good for example. This may be where I am confused.
8 I'm looking at a report from your office for S-37. I would
9 ask that, if I might, if I could...now, I'm looking at one
10 for S-37A and then I'm looking at one for S-37B. Again, I'm
11 not the smartest person in the whole world, but there appears
12 to be three reports from three different wells and three
13 different units. Could I...if I might, Mr. Chairman?

14 BENNY WAMPLER: Sure.

15 PETER KLUBIAK: I just need to ask permission to
16 approach the witness.

17 BENNY WAMPLER: Sure.

18 PETER KLUBIAK: And that's why people get...and I'm
19 just asking. I can understand why they're confused because
20 I'm confused. I believe Mr. Arrington, there is no S-37A.

21 BOB WILSON: Well, I'll join you in the confusion
22 because I can't...I can't explain---.

23 PETER KLUBIAK: And there appear to be three
24

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1 different amounts, three different numbers, set of numbers.

2 BENNY WAMPLER: What are those---?

3 BOB WILSON: And for the record...excuse me.

4 BENNY WAMPLER: What are those reports you're
5 looking at?

6 BOB WILSON: I was going to say, for the record,
7 the reports that Mr. Klubiak has given me are production
8 reports that were produced by the Division of Gas and Oil
9 system, which show production for a well that's called S-37A.
10 It has one...it shows one month of production for 11/2001 as
11 being 5,310,000 cubic feet. That's the only production it
12 shows on this report. We would have to go back and look at
13 our records to see under the assumption that Mr. Arrington
14 says that that well has not been drilled---.

15 PETER KLUBIAK: But, again for the record, Mr.
16 Wilson, the other two reports indicate, I think, S-37 and S-
17 37B.

18 BOB WILSON: Correct. That's correct. The other
19 two reports ongoing production from S-37 and S-37B. So I
20 fully see the source of your confusion here because we do, in
21 fact, on a report from the Division of Gas and Oil, show
22 production for one month attributable to an S-37A well, which
23 we will have to address.

24

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1 (Mr. Arrington and Mr. Swartz confer.)

2 MARK SWARTZ: What was the total mcf in that

3 November 2001?

4 BOB WILSON: 5310 mcf.

5 (Mr. Arrington and Mr. Swartz confer.)

6 MARK SWARTZ: Was that the date of the deposit or

7 the date of the production? Can you tell?

8 BOB WILSON: This is the month of the production.

9 MARK SWARTZ: Month of the production.

10 BOB WILSON: Yeah, it would be the month of actual

11 production as reported to us or as entered by us at any rate.

12 BENNY WAMPLER: How is that report generated, Mr.

13 Wilson? Where does the data come from---?

14 BOB WILSON: The data originates with the reports

15 that companies file with the Division of Gas and Oil that

16 they are required to file on a monthly basis for each

17 production month. That's entered into our data base and

18 these reports are generated on a well by well basis from that

19 data base.

20

21 PETER KLUBIAK: Not to belabor the point, but that

22 is my point, that this is a confusing situation. There are

23 numerous wells in numerous units. There appear to be...you

24

1 know, I understand Mr. Swartz explanation. I would point to
2 the Board, again, assuming there is a system of checks and
3 balances, I would point out to the Board that this system of
4 checks and balances is internal apparently. Mr. Wilson has
5 reported to me that they simply don't have the staff or the
6 time to go back and double check these figures. I think at
7 this point, is the Board charged with the fiduciary
8 responsibility of overseeing this fund, and presumably
9 insuring it's accurate, but that I would argue that there
10 are...there are certainly holes in the system and I think the
11 question of accountings and escrow and production numbers and
12 how they reconcile, Mr. Swartz illustrated as a witness, the
13 fact that are two...there are well production, individual
14 well production numbers, and there are points of sale by, I
15 would assume, production numbers and sales numbers and they
16 are presumably tracked back to the wellhead itself. However,
17 I would argue, or would state to the Board, that my guess is
18 that Mr. Wilson has no clue what those numbers are and how
19 they are reconciled. It's an internal process that
20 apparently CNX or Consol is happy with. But my argument is
21 that I'm pretty sure, based on what I know, that the Board
22 doesn't...simply does not have the means or the capability to
23 go back and look at those numbers. nor do they even get them.

24

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1 Again, it's my understanding from Mr. Wilson and his staff
2 that they get escrow numbers as reported by Wachovia once
3 they hit the bank. That is the sum total of their oversight,
4 and presumably that's well managed by Wachovia. Our concern
5 is, as the potential owners of that fund, a percentage of
6 that fund, how that number gets reported to Philadelphia at
7 Wachovia is what we're concerned about. I think that there
8 is ample room for error when we're talking about billions of
9 cubic feet of this stuff. I think the understanding that I
10 have is that maybe somebody needs to watch the henhouse, and
11 that...I will simply leave it at that, and I thank you for
12 your time.

13 BENNY WAMPLER: Thank you.

14 MARK SWARTZ: Our production records for 37 show
15 roughly 6600 that month, which would be consistent with
16 escrowing less than the total. But I can't get to the...I
17 mean, I don't have the data that would allow me to back that
18 down to the number. But at least it's...you know, it's a
19 number that makes sense in the context.

20 BOB WILSON: I have no way of checking that.

21 MARK SWARTZ: I understand. I'm just saying that,
22 you know, that number that you're reporting does not appear
23 to me to be a number that couldn't happen since our total
24

1 production, and we weren't escrowing a 100% of the money for
2 that unit, was indeed greater than what you're showing in
3 that month. I mean, that's about the only observation I
4 can...I can make today, you know.

5 PETER KLUBIAK: Thank you very much. If I could
6 ask Mr. Wilson and get those back.

7 BENNY WAMPLER: Sure.

8 PETER KLUBIAK: Thank you very much.

9 MASON BRENT: Mr. Chairman, before we leave this
10 issue---.

11 BENNY WAMPLER: Sure.

12 MASON BRENT: ---are we going to get some follow up
13 and explanation for this.

14 BOB WILSON: Sure.

15 BENNY WAMPLER: Mr. Wilson will be checking to see
16 if...if he, in fact, had a production report from that well
17 and whether or not that was a typographic error entered by
18 the staff...his staff in putting it into our system on that
19 one.

20 PETER KLUBIAK: I would point out to the Board that
21 we have records, Mr. Wilson has seen and discussed in the
22 record a report for S-37, a report for S-37A and a report for
23 S-37B. That appears to be contrary to what their system is
24

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1 supposed to do. I don't know whether those records came, you
2 know, as a typo from Consol or they were internally entered
3 wrong. But we have three separate reports for three separate
4 wells. Not coincidentally, the permits are for three
5 separate wells. Notwithstanding the fact that Mr.
6 Arrington's position is that S-37A doesn't exist, permitted
7 but doesn't exist.

8 BENNY WAMPLER: Let me ask you, if you will just
9 bear with us just a few more minutes because the other Board
10 members may have questions, but you did specifically ask for
11 relief. The relief requested here was answers and
12 explanations and you heard the answers and explanations
13 except for this one. I would ask you if there's...you know,
14 what further request would you have. We will resolve the one
15 outstanding, the S-37A.

16 PETER KLUBIAK: I think at this point, Mr.
17 Chairman, we've got an explanation. I'll talk with my
18 clients and if there's any further concerns, I'll certainly
19 address them to Mr. Wilson and the Board directly. But I
20 think at this point we...we asked for an explanation, Mr.
21 Swartz gave an explanation, and I'll talk to them about...I
22 agree with that. I am quite concerned about...and, again,
23 I'm using it as an illustration, I've done enough of this to
24

1 know that it is awfully tough to figure out some of these
2 numbers and we are going to be in a position very shortly,
3 hopefully, where we are going to have to attach dollars and
4 cents to individual people.

5 BENNY WAMPLER: Exactly.

6 PETER KLUBIAK: And this kind of information makes
7 it awfully tough. If, in fact, five million cubic feet were
8 pumped from a well that supposedly doesn't exist, then I
9 think we've got a big problem.

10 BENNY WAMPLER: Well, I will tell you from the
11 Board's past experience, and then I will open for the Board,
12 that people have come before the Board for disbursement, when
13 you get into that level, that's when you get...you know, the
14 Board's experience is the detail of production. We've been
15 through that with Garden Creek. Some of you...Garden Realty,
16 I mean, and others that, you know, your clients would sit
17 down and come to an agreement as to production, as to
18 dollars, etcetera. That's the experience before the Board.

19 PETER KLUBIAK: But we have...insofar as the
20 Ratliff Plaintiffs, we have a number that has been tracked
21 and has been put together. I don't think we have...we can,
22 again, agree...the nice part of it is we're down to simply
23 it's either Harrison Wyatt or the Ratliff heirs and Ratliff

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1 owners. So, I don't think we're going to be in that position
2 with that. But I anticipate...and that's because both my
3 legal assistant and the staff have spent two years frivolling
4 away at what the numbers are. So, I think we have a...we
5 know what that number is.

6 BENNY WAMPLER: But you agree that it's not simple.
7 There's a lot...there's a lot behind that.

8 PETER KLUBIAK: Right. And I understand...that's
9 my point is that most of them are not going to be...have the
10 benefit of two years worth of work.

11 BENNY WAMPLER: Right. I understand. Any other
12 questions or comments from members of the Board? Thank you.

13 SHARON PIGEON: I have a question. I'm not a
14 member of the Board. But you did mention that you had
15 proposed some sort of abbreviated quicker procedure after the
16 Supreme Court rules in its decision. Have any of the other
17 claimants to this escrow money filed any actions in the
18 meantime, declaratory judgment?

19

20 PETER KLUBIAK: I...I represent probably...well, I
21 say represent. I don't have a signed retainer agreement.
22 But I have been approached by probably thirty different
23 individuals. Again, ranging...and that's part of the

24

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1 problem, ranging from small amounts of money to fairly
2 significant amounts of money. I have told them wait,
3 including the Linkous Horn heirs. I don't want to file these
4 things until we have a ruling from the Court. But once we
5 have a ruling from the Court, I probably anticipate filing
6 twenty to thirty suits almost immediately. I think that
7 the...frankly, there needs to be a better procedure than what
8 I did in the Ratliff, which is simply filed a declaratory
9 judgment action and let the whole thing go through hearing,
10 etcetera. I think that...I know Judge Williams has been
11 giving this some thought, as well he might. And...and, you
12 know, the Commissioner's system...this is a law kind of
13 situation. So, it's not really equity. But there are
14 systems out there for, I would think, some sort of Special
15 Commissioner or Master Commissioner or some system where
16 there could be hearings held in Grundy and Lebanon, etcetera,
17 on three days in a row. Literally, I've given this a lot of
18 thought. People would come in with the necessary
19 documentation and there would be notice of the hearings,
20 etcetera, in the paper or whatever. If anybody had a
21 dispute, they could come in. But it literally ought to be as
22 easy as proving that I own the surface and the gas and oil.
23 I severed the coal. Here are the two deeds. That's all I

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1 severed. This unit escrow and whatever the percentage is
2 rightfully should belong to me. Now, I think what Mr.
3 Wampler just said is going to be an issue is that we've got a
4 unit and we've got twenty-six claimants. The problem then is
5 going to be the twenty-six claimants. Now, the Board, I
6 think, has...Mr. Wilson's office has attempt...well, I
7 shouldn't say that. I don't know. I think he has attempted
8 to keep the percentages straight, but I'm not sure that's the
9 case. So, we may have a real issue with the fourteen
10 different Jones heirs. But at least we can establish the
11 Jones heirs...it's the Jones heirs' money and they can go
12 duke it out in Circuit Court or settle it themselves.

13 BENNY WAMPLER: Well, certainly what we'll have is
14 we'll have a record.

15 PETER KLUBIAK: Right.

16 BENNY WAMPLER: We have the Board record.

17 PETER KLUBIAK: But insofar as the \$10,000 that
18 belongs to the Jones heirs from unit S blank, we can
19 certainly establish that, I think, with some sort of
20 expedited procedure that doesn't...doesn't waste your time
21 and doesn't have people coming before the Board, doesn't
22 waste a whole lot of Circuit Court time. I don't know the
23 answer. But I think it certainly behooves Mr. Kilgore to

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1 think about it.

2 BENNY WAMPLER: That would be something that the
3 Circuit Court would...you're suggesting the Circuit Court---?

4 PETER KLUBIAK: Before the office of the Supreme
5 Court or administrative office of the courts. So, there's a
6 lot of bodies around.

7 BENNY WAMPLER: Appoint a Special Commissioner.

8 PETER KLUBIAK: But I think that asking individual
9 Circuit Court judges, whose dockets are already chocked full,
10 to jump into five or six hundred cases and deal with in some
11 cases somewhat complex property issues is ridiculous.

12 SHARON PIGEON: Well, aside from that, though...
13 aside from filing the action, have these folks established
14 their chain of title, which would have to be established all
15 the way back to the initial landowner.

16 PETER KLUBIAK: No, no. I have...no.

17 SHARON PIGEON: So, there is a lot of work in
18 presenting a case. It still needs to do that.

19 PETER KLUBIAK: There is. I wouldn't agree with
20 you. I think that frankly if they can establish ownership,
21 and this is going to be an issue, but if I can establish the
22 fee simple ownership at the current time and good title, I
23 don't care about the chain of title because that's not---.

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1 SHARON PIGEON: How else are you going to establish
2 fee simple ownership without a chain of title?

3 PETER KLUBIAK: Well, I'm not positive I have to
4 come with an abstract or a title opinion, but that may end up
5 having to be. But that...also, that may not be
6 insurmountable. I mean, presumably when most of these people
7 got their title, they've got that. So, I understand. I
8 understand the requirement is that they're going to have to
9 establish fee simple ownership of everything except the coal.
10 But I think if they can do that...maybe that's what they
11 have to do. They have to come with a title opinion and a
12 title...maybe that's it. Maybe there has to be a title
13 expert at every one of these things, too. I don't know. But
14 I know that there ought to be a procedure or else it's going
15 to be a real mess and it's going to be a nightmare for the
16 courts, for the Board, for Mr. Wilson's office and for these
17 people whose money it really is. I don't...those are only
18 suggestions. Obviously, I don't have anything...I'm just
19 saying those are issues.

20 SHARON PIGEON: If they don't have---.

21 PETER KLUBIAK: I'd be glad to meet...there are
22 several other attorneys who have looked at it in this area
23 and they think that. I know Judge Williams has certainly
24

1 thought lots about it in the last couple of years and knows
2 that it's out there as an issue. I know that he would love
3 to...it's certainly in his interest to get this figured out.

4 SHARON PIGEON: Well, without that, I just don't
5 see how it could go forward either way, expedited or not.

6 PETER KLUBIAK: I agree with the establishing. But
7 I...I...okay.

8 BENNY WAMPLER: Very good. Thank you very much. I
9 appreciate your suggestions and comments.

10 PETER KLUBIAK: Thank you.

11 BENNY WAMPLER: Thank you very much. The next item
12 on the agenda is a petition from CNX Gas Company, LLC for
13 repooling of coalbed methane unit S-36, docket number VGOB-
14 98-0324-0626-03. We'd ask the parties that wish to address
15 the Board in this matter to come forward at this time.

16 MARK SWARTZ: Mark Swartz and Les Arrington.

17 BENNY WAMPLER: The record will show there are no
18 others. You may proceed.

19 MARK SWARTZ: Just to refresh your recollection,
20 Les and I offered all of the testimony required of us, or at
21 least we felt like we did, with regard to S-36 that you just
22 called---.

23 BENNY WAMPLER: Yes.

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1 MARK SWARTZ: ---and then docket items five, six,
2 seven and eight. They were simply continued to take up the
3 matter that we've just disposed of. So, I think they're
4 right for a motion or questions that you might have.

5 (Off record.)

6 BENNY WAMPLER: If you will recall, that testimony
7 was taken last time and continued for purposes of today. I
8 believe we had an opportunity for...not to cut off any
9 questions, but we had an opportunity for questions as a
10 witness and the evidence was presented. So, having said
11 that, I will entertain questions or a motion for approval or
12 denial. Let me go ahead, for the record, and call these
13 appropriately. In addition to the one I just called, is a
14 petition from CNX Gas Company, LLC for pooling of coalbed
15 methane unit S-36, docket number VGOB-98-0324-0626-03; and
16 units S-37, docket number 98-0421-0649-02; unit T-35, docket
17 number VGOB-98-1020-0695-01; unit T-36, docket number VGOB-
18 98-0324-0625-03; unit T-37, docket number VGOB-98-0421-0650-
19 02. We'd ask the parties to address the Board in these
20 matters to come forward at this time.

21 MARK SWARTZ: Mark Swartz and Les Arrington on
22 those as well.

23 BENNY WAMPLER: Do you have anything further on
24

1 them, Mr. Swartz?

2 MARK SWARTZ: No, I do not.

3 MASON BRENT: Mr. Chairman, I recall all the
4 testimony given last month in these matters. I make a motion
5 that we approve them.

6 BENNY WAMPLER: I have a motion to approve. Is
7 there a second?

8 JIM MCINTYRE: Second.

9 BENNY WAMPLER: Any further discussion?

10 (No audible response.)

11 BENNY WAMPLER: All in favor, signify by saying
12 yes.

13 (All members signify by saying yes.)

14 BENNY WAMPLER: Opposed, say no.

15 (No audible response.)

16 BENNY WAMPLER: You have approval. The next item
17 on the agenda is a petition from CNX Gas Company, LLC for
18 pooling of a coalbed methane unit AZ-99, docket number VGOB-
19 04-0120-1250. We'd ask the parties that wish to address the
20 Board in this matter to come forward at this time.

21 MARK SWARTZ: Mark Swartz and Les Arrington.

22 BENNY WAMPLER: The record will show there are no
23 others. You may proceed.

24

1 MARK SWARTZ: Mr. Wampler, I'd ask that you
2 consider combining twelve and thirteen. These are the three
3 Nora units that we have on the docket today. We could do
4 that.

5 BENNY WAMPLER: I'd also call a petition from CNX
6 Gas Company, LLC for pooling of coalbed methane unit AZ-101,
7 docket number VGOB-04-0120-1251; and unit BA-99, docket
8 number VGOB-04-0120-152...excuse me, -1252. We'd ask the
9 parties that wish to address the Board in this matter to come
10 forward at this time.

11 MARK SWARTZ: It would also be Mark Swartz and Les
12 Arrington.

13 BENNY WAMPLER: The record will show there are no
14 others. You may proceed.

15

16 LESLIE K. ARRINGTON

17 DIRECT EXAMINATION

18 QUESTIONS BY MR. SWARTZ:

19 Q. Les, I'm going to remind you that you're
20 still under oath.

21 A. Yes.

22 MARK SWARTZ: And with the Chairman's permission, I
23 would like to incorporate the testimony with regard to the

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1 applicant and admission to do business and with regard to the
2 operational issues, that the blanket bond is on file and so
3 forth, as well as the opinion testimony that was submitted
4 with regard to the first two cases that we heard today so I
5 don't have to repeat that.

6 BENNY WAMPLER: That will be incorporated.

7 Q. Les, did you either draft or supervise the
8 preparation of the notices, application and exhibits with
9 regard to these three units?

10 A. Yes, I did.

11 Q. And these three units are Nora units, is
12 that correct?

13 A. Yes, they are.

14 Q. AZ-99 and AZ-101, I believe according to the
15 plats have 58.78 acres, is that correct?

16 A. That's correct.

17 Q. And the BA-99 unit is ever so slightly
18 larger. It has 58.79 acres?

19 A. It does.

20 Q. It is the plan to drill one frac well in the
21 drilling window of each of these units?

22 A. Yes, it is.

23 Q. And the Nora units would be projected to
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1 produce coalbed methane from the Raven Seam down, would that
2 be right?

3 A. That's correct.

4 Q. What did you do to notify the folks that
5 you've listed as respondents of today's hearing?

6 A. We mailed by certified mail, return receipt
7 requested on December 19th, 2003. We published AZ-99 in
8 Bluefield Daily Telegraph on December 26th, 2003; AZ-101,
9 December 27th, 2003; and BA-99, December 29th, 2003.

10 Q. Have you filed your proofs of mailing and
11 proofs of publication with Mr. Wilson?

12 A. Yes, we have.

13 Q. What lease terms would you recommend here
14 for any Board order?

15 A. Our standard coalbed methane lease is a
16 dollar per acre per year, five year paid up term with a one-
17 eighth production royalty.

18 Q. Let's start with the specifics concerning
19 AZ-99, okay. What is the information with regard to the cost
20 of the well, the permitting and the proposed depth of the
21 well?

22 A. AZ-99 is...estimated cost is \$240,540.68,
23 estimated depth is 2,480 feet; and the permit number is 5560.

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1 AZ-101---.

2 Q. Let's stay with AZ-99.

3 A. Okay.

4 Q. What are the interests that you've acquired
5 and what are the interests that you're seeking to pool?

6 A. We have 100% of the coal owners' claim to
7 coalbed methane leased, 93.2783% of the oil and gas owners'
8 claim to coalbed methane leased; and we're seeking to pool
9 6.7217% of the oil and gas owners' claim to coalbed methane.

10 Q. There's an Exhibit E here and I think the
11 only tract that requires escrow for conflict is tract 1B, as
12 in boy, is that correct?

13 A. Yes.

14 Q. There's also an Exhibit EE, which indicates
15 there are some split agreements?

16 A. Yes, there is.

17 Q. And are you requesting that the Board
18 authorize the operator to pay the people that have entered
19 into split agreements directly rather than escrowing their
20 funds in accordance with their split agreements?

21 A. That's correct, we would.

22 Q. There are no revised exhibits with regard to
23 AZ-99?

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1 A. No.

2 Q. Okay. Let's move on to AZ-101, and we've
3 got a bunch of revised exhibits with regard to that one,
4 correct?

5 A. Yes.

6 Q. Okay. I don't think you revised the well
7 cost information.

8 A. No, we did not.

9 Q. Okay. What is that information?

10 A. The well cost, estimated cost, is
11 \$236,289.72, estimated depth is 2,300 feet, permit number is
12 5936.

13 Q. Okay. Let's turn to the revised exhibits to
14 go through the information here. It looks like, because
15 there is an Exhibit B-2, that you're proposing to dismiss
16 some people?

17 A. Yes, we are.

18 Q. And what is the reason for that?

19 A. After continued due diligence, we discovered
20 that all those folks were not owners.

21 Q. And that's given as the reason for dismissal
22 in Exhibit B-2?

23 A. Yes, it is.

24

1 Q. All right. And I assume that the change in
2 Exhibit B-3 is simply to delete the folks that you've
3 dismissed?
4 A. Yes, it was.
5 Q. Okay. The same for revised Exhibit E?
6 A. Yes.
7 Q. And when you deleted all of those, then
8 there was no escrow required for conflicts, is that correct?
9 A. No.
10 Q. No, there wasn't an escrow required?
11 A. Correct.
12 Q. Then we've got an Exhibit EE, which
13 indicates some folks have entered into split agreements?
14 A. Yes.
15 Q. And are you requesting that the Board allow
16 the operator to pay those people listed in Exhibit EE rather
17 than escrowing their funds, and to pay them in accordance
18 with their private agreements?
19 A. Yes, we would.
20 Q. Then lastly, there is a revised tract ID
21 which also would be consistent with dismissing the people
22 that weren't owners?
23 A. That's correct.

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1 Q. Okay. Let's go then to...what interests
2 have you acquired in this unit and what are you seeking to
3 pool in AZ-101?

4 A. We have acquired in AZ-101, 100% of the coal
5 owners' claim to coalbed methane, 91.5617% of the oil and gas
6 owners' claim to coalbed methane. We're seeking to pool
7 8.4383% of the oil and gas owners' claim to coalbed methane.

8 BENNY WAMPLER: Excuse me one second. On the
9 exhibit, you mentioned a revised tract ID?

10 MARK SWARTZ: Right. It should be the last page.
11 It got out of order in yours maybe, or something, or didn't
12 get in there. Are you looking at AZ-101?

13 BENNY WAMPLER: We've got it right here.

14 Q. Other than escrowing for...let's look here.
15 There's apparently no escrow required at all now that we've
16 revised the exhibit?

17 A. That's correct.

18 Q. Just to note something for the Board, you've
19 got...in Exhibit B-3, you've got an asterisk after Mr.
20 Martin's name, and you're indicating that the CBM is possibly
21 leased to Equitable Production, right?

22 A. Yes.

23 Q. Does CBM have some sort of...I'm sorry, does
24

1 Equitable have sort of a generic oil and gas lease and
2 there's a dispute as to whether or not they actually took the
3 CBM when they leased the oil and gas, or what's the
4 situation?

5 A. I can't recall, but Mr. Martin has done a
6 royalty split agreement with the coal owners.

7 Q. Okay. But I guess...but as far as you can
8 tell, Equitable may have a lease in here?

9 A. That's correct.

10 Q. And I can see they're...that's going to have
11 to be considered when the election options are---.

12 A. It will be.

13 Q. And at least on the...and that lease
14 interest pretty much accounts for what you're pooling?

15 A. Yes, it does.

16 Q. And we're going to see more of that as we
17 work through the next few?

18 A. You will.

19 Q. Let's move on to BA-99, which is the last of
20 these three Nora units. We've got a bunch of revised
21 exhibits here as well, correct?

22 A. Yes.

23 Q. Did you revise any with regard to the well
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1 cost information, that sort of thing?

2 A. No, we didn't.

3 Q. What is your estimate of cost and the

4 permitting information and so forth?

5 A. BA-99, the estimated cost is \$242,742.55,

6 estimated depth is 2,555 feet, permit number is 5920.

7 Q. Okay. Now, I think here we've got...we also

8 have some people that need to be dismissed, and they would be

9 listed in Exhibit B-2 in the revised packet that the folks

10 got today.

11 A. It is.

12 Q. And what's the reason for dismissal?

13 A. One of the parties was not a lessor and one

14 of the parties was leased.

15 Q. Okay. So Equitable wasn't a lessor in Tract

16 1-B?

17 A. Right.

18 Q. It turned out right, correct?

19 A. Uh-huh.

20 Q. Then you wound up leasing Mr. Curtis Austin

21 in tract 1-F?

22 A. We did.

23 Q. Was Exhibit B-3 amended then accordingly?

24

1 A. Yes, it was.

2 Q. Then we have a revised Exhibit E?

3 A. Yes.

4 Q. Which indicates that there would be an

5 escrow requirement because of conflicts in tracts 1-C, 1-D,

6 and 1-F, is that right?

7 A. Correct.

8 Q. Would you tell the Board what interest you

9 have now that we've straightened out the parties with Exhibit

10 B-2, what interest you've acquired and what interest you are

11 seeking to pool?

12 A. We have acquired 100% of the coal owners'

13 claim to coalbed methane. We've leased 71.345% of the oil

14 and gas owners' claim to coalbed methane. We're seeking to

15 pool 28.865% of the oil and gas owners' claim to coalbed

16 methane.

17 Q. And that's down from 49% in the original---?

18 A. Yes.

19 Q. ---in the original application?

20 A. Uh-huh.

21 MR. SWARTZ: That concludes the testimony I would

22 have on those three units, Mr. Chairman.

23 MR. WAMPLER: Questions from members of the Board?

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1 BOB WILSON: Mr. Chairman?

2 MR. WAMPLER: Mr. Wilson.

3 BOB WILSON: For the record, we received a letter

4 from Mr. Jimmy Harris, who was the person listed here

5 previously as possibly leased to Equitable Production

6 Company, and this issue has already been cleared up by their

7 testimony, but Mr. Harris was stating that there was no such

8 valid lease with Equitable Production. That was the purpose

9 of his letter.

10 MR. WAMPLER: That helps me because I was going to

11 go back and put an asterisk by that. You explained Equitable

12 didn't, but in your reason for dismissal, you had Jimmy

13 Harris as NA. That's because you had it down as a lease with

14 Equitable that didn't turn out to be correct.

15 Questions?

16 (No audible response.)

17 MR. WAMPLER: Is there a motion?

18 JAMES MCINTYRE: Motion to approve.

19 BILL HARRIS: Second.

20 MR. WAMPLER: Second. Any further discussion?

21 (No audible response.)

22 MR. WAMPLER: All in favor, signify by saying yes.

23 (All members signify by saying yes.)

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1 MR. WAMPLER: Opposed say no.
2 (No audible response.)
3 MR. WAMPLER: You have approval. The next item on
4 the agenda is a petition from CNX Gas, LLC for pooling of a
5 coalbed methane unit EE-11, docket number VGOB-04-0120-1254.
6 We'd ask the parties that wish to address the Board in this
7 matter to come forward at this time.
8 MARK SWARTZ: Mark Swartz and Les Arrington.
9 BENNY WAMPLER: The record will show no others.
10 You may proceed.
11 MARK SWARTZ: Mr. Chairman, EE-38, which skips one
12 docket number, it's sixteen, is also and Oakwood unit. If
13 you could perhaps consider adding that, we could deal with
14 both of those and I would be done.
15 BENNY WAMPLER: We'll go ahead and call that.
16 Also, a petition from CNX Gas Company, LLC for repooling of a
17 coalbed methane unit EE-38, docket number VGOB-02-0521-1029-
18 01. We'd ask the parties that wish to address the Board in
19 this matter to come forward at this time.
20 MARK SWARTZ: Also Mark Swartz and Les Arrington.
21 BENNY WAMPLER: The record will show no others.
22 You may proceed.
23 MARK SWARTZ: Mr. Chairman, I'd like to
24

1 incorporate, if I could, by reference the testimony with
2 regard to the applicant and the applicant's qualifications
3 and with regard to the reasons...the opinion testimony as to
4 why this would protect correlative rights and so forth if I
5 could do that.

6 BENNY WAMPLER: Including the provisions for
7 payout?

8 MARK SWARTZ: For the lease term, yes. Yes.

9 BENNY WAMPLER: That will be incorporated.

10 MARK SWARTZ: Thank you.

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1 LESLIE K. ARRINGTON

2 DIRECT EXAMINATION

3 QUESTIONS BY MR. SWARTZ:

4 Q. Les, I'm going to remind you that you're
5 still under oath.

6 A. Yes.

7 Q. Lets start with EE-11, okay. Could
8 you...this is an Oakwood unit?

9 A. Yes, it is.

10 Q. And it's being pooled under Oakwood I, which
11 mean that it would be a frac well?

12 A. That's correct.

13 Q. It's an 80 acre unit, correct?

14 A. Yes.

15 Q. And you're proposing one well to be drilled
16 in the drilling window?

17 A. Yes, we are.

18 Q. And that well would produce coalbed methane
19 gas from the Tiller Seam on down?

20 A. Yes, it does.

21 Q. What is the situation with regard to what
22 you've acquired by lease or otherwise and what you're seeking
23 to pool here?

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1 A. We've leased both coal, oil and gas interest
2 of 93.1375%. We're seeking to pool 6.8625% of the coal, oil
3 and gas.

4 Q. And this is another situation where
5 Equitable may have a lease with regard to the outstanding
6 interest?

7 A. That's correct.

8 Q. There's no escrow required with regard to
9 this unit, correct?

10 A. Correct.

11 Q. Let's turn to EE-38, all right.

12 A. Yes.

13 Q. EE-38 is a repooling?

14 A. Yes, it is.

15 Q. This was originally pooled back in, I guess,
16 '02. It was filed in May of '02?

17 A. Yes, it was.

18 Q. Okay, what's...what's the reason for the
19 repooling?

20 A. We discovered we had an error in ownership
21 and we're correcting it.

22 Q. And was there also a mapping issue?

23 A. Yes, it was.

24

1 Q. Okay. And you fixed both of those?

2 A. We have.

3 Q. Have you noticed absolutely everybody in the

4 unit because the percentages are going to change?

5 A. It did.

6 Q. Okay.

7 A. We did.

8 Q. What have you done to notify the people you

9 pooled before and the additional folks?

10 A. We mailed by certified mail return receipt

11 requested on December the 19th, 2003. We published EE-38 on

12 December the 31st, 2003 in the Bluefield Daily Telegraph.

13 Q. And have you filed that information with Mr.

14 Wilson today?

15 A. Yes, we have.

16 Q. What is the interest that you've been able

17 to acquire and could you compare that to what it is you're

18 seeking to pool today?

19 A. Yes. We have 100% of the coal owner's claim

20 to coalbed methane leased. We have 84.55% of the oil and gas

21 owner's claim to coalbed methane leased. We're seeking to

22 pool 15.45% of the oil and gas owner's claim to coalbed

23 methane in EE-38.

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1 Q. What...what's the information with regard to
2 well cost here and permit and the depth?

3 A. Yes. EE-38, the estimated cost is
4 \$200,079.42. The depth is 2,230.27 feet. It's permit number
5 is 4901.

6 Q. There is...there's quite a list of tracts
7 that require escrow because of conflicts?

8 A. Yes, it is.

9 Q. I'll go slowly here and interrupt me if I
10 miss something, okay.

11 A. Okay.

12 Q. 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2L,
13 2M, 2N, 2O, 2P, 2Q, 2R, 2T, 2U and Tract 3 all require escrow
14 because of conflicts?

15 A. That's correct.

16 Q. And then there's a...you filed an Exhibit
17 EE, which indicates that some folks have split agreements?

18 A. Correct.

19 Q. And are you requesting that the Board order
20 allow you to pay those people directly in accordance with
21 their agreements rather than escrowing their funds?

22 A. Yes, we are.

23 MARK SWARTZ: That's with regard to those two

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1 units, Mr. Chairman.

2 BENNY WAMPLER: Any questions from members of the
3 Board?

4 SHARON PIGEON: I have a question. What did you
5 change on Exhibit A, page two on EE-38?

6 LESLIE K. ARRINGTON: Yes, if you notice on, I
7 believe it said oil and gas gross and net acres, we had 85.55
8 in one column and 84.55 on one and it should have been 84...I
9 believe 84.

10 SHARON PIGEON: The acreage and not the percentages
11 were changed?

12 LESLIE K. ARRINGTON: That's...yeah. It was just
13 the percentage. We had an error in the number.

14 BENNY WAMPLER: And the net percentage?

15 LESLIE K. ARRINGTON: Yes.

16 MARK SWARTZ: Yeah, the righthand column, the
17 second entry should have been 84 instead of 85. Am I right?

18 LESLIE K. ARRINGTON: Yes, that's correct.

19 BENNY WAMPLER: Other questions?

20 (No audible response.)

21 BENNY WAMPLER: Do you have anything further?

22 MARK SWARTZ: No.

23 BENNY WAMPLER: Is there a motion?

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1 JIM McINTYRE: Motion to approve.

2 BENNY WAMPLER: Is there a second?

3 BILL HARRIS: Second.

4 BENNY WAMPLER: Second. Any further discussion?

5 (No audible response.)

6 BENNY WAMPLER: All in favor, signify by saying

7 yes.

8 (All members signify by saying yes.)

9 BENNY WAMPLER: Opposed, say no.

10 (No audible response.)

11 BENNY WAMPLER: You have approval. Thank you very

12 much.

13 MARK SWARTZ: Thank you very much.

14 BENNY WAMPLER: Before you leave, and since the

15 other attorneys are in the room, I just want to tell you so

16 far the draft form of order the Board is using is not working

17 as good as we would hope it would because we're getting a lot

18 of changes when we...when it's coming back in, the tract

19 changes. So, we'll be working with you, Sharon and I and Bob

20 in particular, to try to do whatever it takes to make it

21 simpler or easier to use if something is triggering cause of

22 change or what have you. But we'll be working to try to

23 further automate that. Also, maybe even to cleanup and

24

1 clarify the order a little bit more. Well, certainly any
2 change to that, we'll bring back before the Board. This is
3 more procedural, you know. It would be appreciated in the
4 meantime if you have identified areas of that order that are
5 difficult, or that cause you to have to go in and make a
6 number of changes, to get that information to us because we
7 are going to try to further automate that so that maybe even
8 go out and pull it from a web and use it there each time.

9 MARK SWARTZ: We're not...we're blissfully unaware
10 that we have a problem. Do we?

11 BENNY WAMPLER: Yeah, everybody does.

12 SHARON PIGEON: Across the Board.

13 BENNY WAMPLER: They're changing...when you do
14 tract changes and it identifies things that are changed. All
15 kinds of language changed each time.

16 MARK SWARTZ: Oh, okay.

17 SHARON PIGEON: We're getting like a whole
18 paragraph---.

19 MARK SWARTZ: Oh, wow.

20 SHARON PIGEON: ---retyped of the boiler plate.
21 That's the way it's coming out.

22 BENNY WAMPLER: The stuff that should be boiler
23 plate.

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1 MARK SWARTZ: Okay.

2 BENNY WAMPLER: So, something...something is going
3 wrong with it.

4 SHARON PIGEON: And it may be that the format is
5 hard to insert information for some reason as it's going that
6 way. So, it's easier for whoever to say---.

7 MARK SWARTZ: All right. Well, you know, just let
8 us know and we'll...yeah.

9 BENNY WAMPLER: So, it's just going to be one of
10 those things where we're trying...we're going to try to...I'm
11 going to try to work with our folks in the computer area to
12 automate in a manner so that certain things just are locked
13 in and can't be changed and the others will be filled in.

14 MARK SWARTZ: Right.

15 BENNY WAMPLER: We'll do that and see if we can---.

16 MARK SWARTZ: Okay.

17 BENNY WAMPLER: ---facilitate it. But just make
18 you aware of that.

19 MARK SWARTZ: Okay. Great.

20 BENNY WAMPLER: Okay, thanks. Take five minutes.

21 (Break.)

22 BENNY WAMPLER: The next item on the agenda is
23 number fifteen for the Board's consideration. A petition
24

1 from Equitable Production Company for pooling of a coalbed
2 methane unit VC-501826, docket number VGOB-04-0120-1255.
3 We'd ask the parties that wish to address the Board in this
4 matter to come forward at this time.

5 JIM KISER: Mr. Chairman and members of the Board,
6 Jim Kiser on behalf of Equitable Production Company. Our
7 witness in this matter will be Mr. Don Hall. We'd ask that
8 he be sworn at this time.

9 (Don Hall is duly sworn.)

10 BENNY WAMPLER: The record will show there are no
11 others. You may proceed.

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DON HALL

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. KISER:

Q. Mr. Hall, state your name for the record, who you're employed by and in what capacity?

A. My name is Don Hall. I'm employed by Equitable Production Company as District Landman.

Q. And do your responsibilities include the land involved in this unit and in the surrounding area?

A. Yes.

Q. And are you familiar with Equitable's application seeking a pooling order for EPC number VC-501826, which was dated December the 19th, 2003?

A. Yes.

Q. And is Equitable seeking to force pool the drilling rights underlying the unit as depicted at Exhibit A, that being the plat to the application?

A. We are.

Q. Now, does Equitable own drilling rights in the unit here?

A. Yes, we do.

1 Q. And prior to filing the application, were
2 efforts made to contact each of the respondents and an
3 attempt made to work a voluntary lease agreement?

4 A. Yes.

5 Q. Now, what is currently the interest of
6 Equitable within the gas estate in the unit?

7 A. We have 59.63% of the gas estate leased.

8 Q. And the interest of Equitable in the coal
9 estate?

10 A. We have a 100% of that leased.

11 Q. And are all the unleased parties set out in
12 Exhibit B-3 to the application?

13 A. They are.

14 Q. And what is the percentage of the gas estate
15 that remains unleased?

16 A. 40.37%.

17 Q. Okay. And that entire percentage is
18 represented by the gas estate interest in Tracts 2 and 4
19 within this unit and both of those tracts are owned by
20 unknown/unlocateable persons?

21 A. That's correct.

22 Q. Being Tract 2 the Joseph Kiser, Jr. heirs,
23 and Tract 4 being the same L. J. M. Kiser heirs?

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1 A. That's correct.

2 Q. Both of whom we forced pooled previously?

3 A. That's correct.

4 Q. And, again, were reasonable and diligent

5 efforts made and sources checked to identify and locate these

6 unknown heirs including primary sources such as deed records,

7 probate records, assessor's records, treasurer's records and

8 secondary sources such as telephone directories, city

9 directories, family and friends?

10 A. Yes.

11 Q. And in your professional opinion, was due

12 diligence exercised to locate each of the respondents in the

13 unit?

14 A. It was.

15 Q. And are the addresses set out in Exhibit B

16 to the application the last known addresses for the

17 respondents?

18 A. Yes.

19 Q. Are you requesting this Board to force pool

20 all unleased interest as listed at Exhibit B-3?

21 A. Yes.

22 Q. Are you familiar with the fair market value

23 of drilling rights here and in the surrounding area?

24

1 A. Yes.

2 Q. Could you advise the Board as to what those
3 are?

4 A. We pay a five dollar bonus, a five year term
5 and a one-eighth royalty.

6 Q. And, in your opinion, do the terms you've
7 just testified to represent the fair market value of and fair
8 and reasonable compensation to be paid for drilling rights
9 within this unit?

10 A. They do.

11 Q. Now, as to the unknown and unlocateable
12 heirs in Tracts 2 and 4, should they ever be located, do you
13 agree that they be allowed their statutory options in regards
14 to being an unleased interest and the statutory election
15 options being: one, participation; two, a cash bonus of five
16 dollars per net mineral acre, plus a one-eighth of eight-
17 eighths royalty; or three, in lieu of that cash bonus and a
18 one-eighth of eight-eighths royalty, share in the operation
19 of the well on a carried basis as carried operator under the
20 following conditions: Such carried operator shall be
21 entitled to his share of production from the tracts pooled
22 accruing to his interest exclusive of any royalty or
23 overriding royalty reserved in any leases, assignments

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1 thereof, or agreements relating thereto of such tracts but
2 only after the proceeds applicable to his share equal, A)
3 300% of the share of such cost applicable to the interest of
4 a carried operator of a leased tract or portion thereof; or
5 B) 200% of the share of such cost applicable to the interest
6 of the carried operator of an unleased tract or portion
7 thereof?

8 A. Yes.

9 Q. Do you recommend that the order provide that
10 all elections by respondents be in writing and sent to the
11 applicant at Equitable Production Company, 1710 Pennsylvania
12 Avenue, Charleston, West Virginia 25328, attention Melanie
13 Freeman, Regulatory?

14 A. Yes.

15 Q. And should this be the address for all
16 communications with the applicant concerning any force
17 pooling order?

18 A. Yes.

19 Q. Do you recommend the order provide that if
20 no written election is properly made by a respondent, then
21 such respondent should be deemed to have elected the cash
22 royalty option in lieu of participation?

23 A. Yes.

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1 Q. Should the unleased respondents be given 30
2 days from the date of the order to file their written
3 elections?

4 A. Yes.

5 Q. If an unleased respondent elects to
6 participate, should they be given 45 days to pay their
7 proportionate share of well costs?

8 A. Yes.

9 Q. Do you expect any party electing to
10 participate to pay those well costs in advance?

11 A. We do.

12 Q. Should the applicant be allowed 120 days
13 following the recordation date of the Board order, and
14 thereafter annually on that date until production is
15 achieved, to pay or tender any cash bonus becoming due under
16 the force pooling order?

17 A. Yes.

18 Q. Do you recommend that the order provide that
19 if the respondent elects to participate but fails to pay
20 their proportionate share of well costs satisfactory for
21 payment of those costs, then their election to participate
22 should be treated as having been withdrawn and void, and
23 respondent should be deemed to have leased?

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1 A. Yes.

2 Q. Do you recommend the order provide that
3 where a respondent elects to participate but defaults in
4 regard to the payment of well costs, any cash sum becoming
5 payable to that respondent be paid within 60 days after the
6 last date on which such respondent could have made
7 satisfactory arrangements for the payment of well costs?

8 A. Yes.

9 Q. In this particular case, since we have both
10 conflicting claimants and unknown owners, do you recommend
11 that the Board establish an escrow account for Tracts 2 and 4
12 of this unit?

13 A. Yes.

14 Q. And who should be named the operator under
15 any fore pooling order?

16 A. Equitable Production Company.

17 Q. And what is the total depth of this proposed
18 well under the plan of development?

19 A. 2361 feet.

20 Q. And the estimated reserves for the unit?

21 BENNY WAMPLER: Let me stop you there. We don't
22 have an AFE.

23 (Jim Kiser and Don Hall confer.)

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1 JIM KISER: I apologize. It looks like I've got
2 the original right here.

3 BENNY WAMPLER: Just pass it around and we'll look
4 at it and you can provide it for the record later. Go ahead
5 with your testimony.

6 Q. Mr. Hall, could you again repeat the
7 estimated reserves for the unit?

8 A. 2361 feet.

9 Q. No, no, no, the estimated reserves?

10 A. Oh, estimated reserves is 300,000,000 cubic
11 feet.

12 Q. And are you familiar with the well costs for
13 the proposed well under the plan of development?

14 A. Yes.

15 Q. Has an AFE been reviewed, signed and
16 recently submitted to the Board?

17 A. Yes.

18 Q. Was an AFE prepared by an engineering
19 department knowledgeable in the preparation of AFEs and
20 knowledgeable in regard to well costs in this area?

21 A. It was.

22 Q. In your opinion, does this AFE represent a
23 reasonable estimate of the well costs?

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1 A. Yes.

2 Q. Could you state for the Board at this time
3 both the dry hole costs and the completed well costs?

4 A. The dry hole cost is \$112,969, and the
5 completed well cost is \$225,305.

6 Q. Do these costs anticipate a multiple
7 completion?

8 A. They do.

9 Q. Does the AFE include a reasonable charge for
10 supervision?

11 A. Yes.

12 Q. In your professional opinion, would the
13 granting of this application be in the best interest of
14 conservation, the prevention of waste and the protection of
15 correlative rights?

16 A. Yes.

17 JIM KISER: Nothing further of this witness at this
18 time, Mr. Chairman.

19 BENNY WAMPLER: Questions from members of the
20 Board?

21 BILL HARRIS: Mr. Chairman?

22 BENNY WAMPLER: Yes, Mr. Harris.

23 BILL HARRIS: A couple of questions about, and this
24

1 is a clarification, I guess, the plat...the well location
2 plat. Let me make sure if I understand. Tract 4 is now at
3 the lower left corner, that inverted V. Then Tract 3 is to
4 the right of that. That's more a rectangle there.

5 DON HALL: Tract 4 is...if you see the number Tract
6 4, above that there's an arrow pointing into a---.

7 BILL HARRIS: Yes, into a little inverted V, yeah.

8 DON HALL: Yes, that's Tract 4.

9 BILL HARRIS: Yes, 4.

10 DON HALL: Tract 3 is to the East of that.

11 BILL HARRIS: Okay, I may have confused the numbers
12 or changed the numbers. Okay, but 3 is to the east of that
13 and so that's that little rectangular section?

14 DON HALL: Right.

15 BILL HARRIS: The other thing is in the lease when
16 you look at Tract 4 it says "Unknown heirs of Samuel J. Kiser
17 and so forth." Now, you're saying Tract 2, there are unknown
18 heirs. Now, I don't see the lease...I see the lease
19 information on your B-3 or the unleased information as it
20 were on B-3. I don't see anything there. I don't know if it
21 needs to be on the plat, if that's a problem. Nothing for
22 Tract 2 that I can see indicates that there's any unknown
23 heirs there.

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1 DON HALL: The Joseph Kiser, Jr. heirs is listed up
2 there. It just doesn't...evidently, they didn't put the word
3 unknown by it.

4 BILL HARRIS: Well, I don't know if that's a
5 problem or not. But I just...when you said it was, I guess I
6 looked at the tract and noticed---.

7 DON HALL: Yeah.

8 BILL HARRIS: ---that the plat didn't show that.
9 But that is...those are the folks?

10 DON HALL: Yeah, those are the folks.

11 BILL HARRIS: Because you can look at B...yeah, B-3
12 and it does list them.

13 DON HALL: Right.

14 BILL HARRIS: That was all. Thank you.

15 BENNY WAMPLER: Thank you.

16 BENNY WAMPLER: Other questions from members of the
17 Board?

18 (No audible response.)

19 BENNY WAMPLER: Do you understand what it's
20 pointing out there, Mr. Wilson?

21 (No audible response.)

22 BENNY WAMPLER: Do you have anything further?

23 JIM KISER: Mr. Chairman, we'd ask that the
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1 application be approved as submitted. If I need to further
2 supplement it with some additional copies of the AFE, just
3 let me know.

4 DON HALL: I'd like to make one correction. The
5 total depth of the well is 2472 feet.

6 BENNY WAMPLER: 2472?

7 (Jim Kiser confers with Don Hall.)

8 JIM KISER: That's consistent with the AFE.

9 BENNY WAMPLER: And Mr. Wilson will give you the
10 original back, but he will need a copy for the record, the
11 AFE. Do you need that corrected on the unknown as well on
12 Tract 2? Do you understand what Mr. Harris raised on the
13 plat, Tract 2?

14 JIM KISER: That needs to be corrected?

15 DON HALL: The plat or---?

16 BOB WILSON: If I understood it properly, yeah.

17 JIM KISER: I would think the plat, all you're
18 required to do under the regs is depict the ownership. I
19 don't know why it has to say unknown. I guess to make it
20 consistent with the other one.

21 BILL HARRIS: Well, that's why I raised the
22 question. I don't know.

23 JIM KISER: I mean, I don't think that's required.

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2 BILL HARRIS: Well, that's...and I'd made that
3 comment, too. I didn't know if it was required.
4 SHARON PIGEON: Well, if you don't know who the
5 heirs are, how are you indicating ownership? That's what
6 you're saying. We don't know who those folks are. As it
7 reads, it would read to me to say that you do know who those
8 heirs are.
9 BILL HARRIS: Yeah, that they have been leased.
10 SHARON PIGEON: Yeah.
11 DON HALL: Well, it's no problem. We can change
12 it.
13 JIM KISER: Yeah, we can change it.
14 BILL HARRIS: I think there are actually some lease
15 numbers under...well, maybe that's the---.
16 JIM KISER: That's---.
17 DON HALL: That's for the coal.
18 JIM KISER: That's for the other estate.
19 BILL HARRIS: Yeah.
20 DON HALL: For the other estate.
21 JIM KISER: All right. So, we need a revised plat
22 and what six or seven additional AFEs, eight or ten?
23 BENNY WAMPLER: Just one.

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1 BOB WILSON: Just one.

2 JIM KISER: Just one?

3 SHARON PIGEON: I would like one, please.

4 JIM KISER: Okay.

5 BILL HARRIS: Mr. Chairman, I move for approval as

6 amended.

7 BENNY WAMPLER: Motion for approval as amended. Is

8 there a second?

9 JIM MCINTYRE: Second.

10 BENNY WAMPLER: Second. Any further discussion?

11 (No audible response.)

12 BENNY WAMPLER: All in favor, signify by saying

13 yes.

14 (All members signify by saying yes.)

15 BENNY WAMPLER: Opposed, say no.

16 (No audible response.)

17 BENNY WAMPLER: You have approval. Thank you.

18 DON HALL: Thank you.

19 BENNY WAMPLER: The next item on the agenda is...do

20 you have an interest in combining them or what---?

21 JIM KISER: Yes, we'd like to combine them.

22 There's one little difference.

23 BENNY WAMPLER: Okay, we'll combine these next two.

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1 A petition from Penn Virginia Oil and Gas Corporation for
2 modification of the Roaring Fork Field Rules to allow for
3 combining twenty-eight existing units into a single
4 provisional unit for drilling up to four horizontal CBM
5 wells. This is docket number VGOB-94-0215-0435-01. Also, a
6 petition from Penn Virginia Oil and Gas Corporation for a
7 modification of the Roaring Fork Field Rules to allow
8 combining fifteen existing units into a single provisional
9 unit for drilling of up to four horizontal CBM wells. Docket
10 number VGOB-94-0215-0435-02. We'd ask the parties that wish
11 to address the Board in these matters to come forward at this
12 time.

13 JIM KISER: Mr. Chairman, Jim Kiser on behalf of
14 Penn Virginia Oil and Gas Corporation. Our witnesses in this
15 matter will be Mr. Tim Lewis and Mr. Dick Waddell. While I'm
16 passing out some additional exhibit material, we'd ask that
17 they both be sworn.

18 (Tim Lewis and Dick Waddell is duly sworn.)

19 JIM KISER: Okay. This, obviously, is going to be
20 a little different than our normal hearings. What we're
21 seeking to do here is modify the existing Roaring Fork Field
22 Rule to enable us to combine a number of existing 80 acre
23 units into a much larger unit for the purposes of...these

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1 will be provisional units, for the purposes of drilling
2 horizontal coalbed methane wells. I'm going to briefly have
3 both Mr. Lewis---. Even though both of them have testified
4 previously before you, since we do have some new Board
5 members and maybe it has been a little while for both of
6 them, I'd like to, before we get into their testimony
7 regarding the geology and the drilling...and production
8 methods, have them just sort of go through their work
9 experience and their background for you all so you can get an
10 idea of where they're coming from. We'll start with Mr.
11 Lewis.

12 TIM LEWIS: I received a Bachelor's of Science
13 Degree in geology from Moorehead State University in
14 Moorehead, Kentucky in 1980. I got a Master's Degree in
15 geology from Brightstate University outside of Dayton, Ohio
16 in 1986. I started working in the oil and gas industry in
17 1983. I've got twenty plus years of experience. I've worked
18 Virginia, West Virginia and Kentucky for the last thirteen
19 years or so. Currently I'm employed by Penn Virginia. I'm
20 their Vice President of geology for their eastern region,
21 which is located in Kingsport, Tennessee, which we do Roaring
22 Fork, Virginia, Kentucky and West Virginia, mainly drilling.

23 DICK WADDELL: I have a Bachelor and Master Degrees

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1 in Petroleum Engineering from the University of Missouri at
2 Rolla. A Master's Degree in Business Administration from
3 Boston University. Registered Professional Engineer in Texas
4 and Oklahoma. Retired twenty years active deputy in U. S.
5 Army Corp of Engineers. Been in the oil and gas business
6 since 1980. Eight and a half years in West Texas primarily
7 with Tenaco Oil Company basically in the drilling and
8 completions work. Various increasing levels of
9 responsibility. A year in the Middle East in Omond and
10 Syria. Three years coalbed methane business in Alabama. Six
11 years in a individual, or independent consulting role, for
12 Penn Virginia Oil and Gas in the Appalachian basin, primarily
13 in southern West Virginia, eastern Kentucky and to a limited
14 degree in Virginia. I have been a Penn Virginia employee
15 since 1999 as a Senior Petroleum Engineer and now as their
16 operations manager responsible for the drilling and
17 completion activities, again, all of the Appalachian basin.
18 We're also operating in Mississippi, Kansas, Louisiana and
19 kind of scattered around.

20 BENNY WAMPLER: And your name is?

21 DICK WADDELL: Dick Waddell. I'm sorry.

22 BENNY WAMPLER: That is for the record. Thank you.

23 JIM KISER: Okay, any questions of the witnesses
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1 regarding their background or experience?

2 BENNY WAMPLER: Questions from members of the
3 Board?

4 (No audible response.)

5 JIM KISER: There are not a lot land issues here,
6 which is one of the great things about this process. As you
7 see, these are very large units compared to what you're use
8 to seeing. One is 1200 acres, I think, and one is 2240
9 acres. HCBM2, the larger unit, Mr. Waddell, I guess, can
10 address these rather than having me testify. But would it be
11 your testimony that all four estates in the unit for the
12 2,240 acre unit for HCBM2, that being the oil, gas, coal and
13 surface are owned by Penn Virginia.

14 DICK WADDELL: That's correct.

15 JIM KISER: Okay. And, again, HCBM3, if I can
16 direct the Board to...that's this unit, the smaller unit, the
17 1200 acre unit. You'll see this little piece here, that
18 is...would it be your testimony, Mr. Waddell, that all four
19 estates are again owned by Penn Virginia with the exception
20 of this area here where that is a surface only tract that is
21 owned by another entity?

22 DICK WADDELL: That's correct.

23 JIM KISER: And what we're doing is we've made sure
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1 that the laterals have stopped even though Penn Virginia owns
2 the material, both coal, oil and...all minerals, coal, oil
3 and gas under this tract because of the surface situation,
4 we've not extended the laterals to interfere with or go under
5 that tract. It's just a decision that was made internally.

6 BENNY WAMPLER: Who owns that surface?

7 TIM LEWIS: That's a tract that Penn Virginia
8 donated to the Appalachian Middle School...Elementary or
9 Middle School.

10 JIM KISER: And would it be your opinion, Mr.
11 Waddell, that everybody who is required by statute under both
12 19 and 20 was notified of this, that being yourself, Penn
13 Virginia operating, the coal owner and then we also notified
14 Equitable Production Company? It does have a conventional
15 oil and gas lease on some of this acreage.

16 DICK WADDELL: That's correct.

17 JIM KISER: And they were all notified and---?

18 DICK WADDELL: Yes.

19 JIM KISER: ---were aware of the hearing and have
20 not filed any objections? And the main reason, one of the
21 main reasons, obviously, other than providing you all with
22 the information regarding the ownership of the land, is we're
23 doing all of our hearings before the Board, the primary

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1 reason to...obviously, impart to you that there are no
2 correlative rights issues in either one of these units.
3 That's why we elected to attempt to form these two units
4 first. They're...if this is successful, they'd like to do
5 quite a few of these and on a going forward basis. There may
6 be some situations where we have to pool in some acreage that
7 isn't Penn Virginia. But in this particular case, it is all
8 Penn Virginia and there are no correlative rights issues.

9 BENNY WAMPLER: Did you determine that the school
10 did not have to be notified as a surface owner?

11 JIM KISER: Yeah. Nothing in 19 or 20 that
12 requires the surface owner to be notified. That being said,
13 if there's no questions on that part of it, I guess we'll
14 start with Mr. Lewis to explain the geology.

15 TIM LEWIS: May I approach the maps?

16 BENNY WAMPLER: Yes.

17 LESLIE K. ARRINGTON: Do I need to be near mikes?

18 BENNY WAMPLER: Well, you can get that one and see
19 how you do.

20 TIM LEWIS: All right. I'll try to be loud.

21 SHARON PIGEON: You can take it out of that stand.

22 TIM LEWIS: Take it out of the stand?

23 COURT REPORTER: It will be fine if you will just
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1 leave it sitting there. I can pick you up.

2 TIM LEWIS: What I'd like to do first is just get
3 you located on where we're at with Exhibit A and kind of
4 follow through with a little bit of the geology and the
5 history of the drilling of coalbed methane in Wise County,
6 which is mainly where we're at here, in the Roaring Fork
7 Field, because the history is important why we have come full
8 circle now to horizontal drilling. I think that will be
9 apparent once I get through some of these maps. If not, feel
10 free to stop me and tell me I'm not doing a good job.

11 Exhibit A is two maps. Structure map on your left
12 here, which is the base of the War Creek.

13 JIM KISER: Let me stop you just for a second. A
14 smaller version of all of these Exhibits are in these
15 booklets that we passed out if that's helpful.

16 TIM LEWIS: I forgot to mention that. You can
17 follow the reduced size version and follow along with me to
18 make it easier.

19 Exhibit A is actually two maps. On your left is a
20 structure map on the base of the War Creek Seam, which is the
21 coal that we want to drill horizontal in. On the right is an
22 isopac, or a thickness map, of the War Creek Seam. To get
23 you located real fast, in yellow...these yellow blocks are

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1 the rough outline of where the towns are. This is
2 Appalachia, Big Stone Gap, Norton, Wise and Pound. We're
3 mainly dealing with Wise County here. This...again, this is
4 a structure map. Contour interval here is 50 feet. So,
5 every...every contour line you see is we're gaining or losing
6 50 feet of structure. As you can see here in this red area,
7 there is a lot of contours that are circled and closed.
8 That's called the Buckknob Anticline. That's a well known
9 feature. And I'll talk to it later, but that is where the
10 current successful vertical CBM program is ongoing by
11 Equitable. You can see the tightening of the contours to the
12 North as we approach the Pine Mountain Fault, which is a
13 structural feature. The same thing to the south as we climb
14 up on the Powell Valley incline over to the Power Valley
15 overload. That's where that is on Rt. 23. So, that gets you
16 located.

17 Other things to note on here are the different
18 colored squares. First off, the grey squares are the 80 acre
19 units that currently exist. The Roaring Fork Field Rules the
20 80 acre units are for vertical wells. The red area currently
21 producing 80 acre units drilled vertically. The pinkish
22 outline are wells that Equitable drilled as pool wells where
23 they actually completed the conventional well and CBM at one
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1 well bore. They're producing them separately, tracking them
2 separate, but they drilled one well bore to test that method.
3 The blue squares are actually wells that were drilled. They
4 proved non-commercial and they were plugged and abandoned.
5 The kind of the bluish/grey circles are actually core holes
6 both Penn Virginia and Equitable have drilled to test the
7 coal for quality and rank and gas contents. The things we do
8 to determine, you know, if this is going to be commercial.
9 So, that gets you started here and located and a little bit
10 of the geology.

11 On the isopac map, it's basically a thickness map
12 and we're showing throughout most of Wise County the War
13 Creek seam, which is the target seam, averages three feet.
14 There's places where it gets up to 90" in thickness, you
15 know, a few little spots. It is a deep seam. It occurs
16 2000 to 2500 feet or greater in depth. It's considered at
17 this time with current technology not to be mineable at this
18 time. What the future brings, I don't know. But at this
19 time, we consider it non-mineable. To give you a feel for
20 what that coal looks like, turn to Exhibit B, the cross
21 section. It looks like this. What I've taken is four well
22 logs that we have actually logged through and had, you know,
23 control for the coal seam here. This is up in the horizontal

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1 unit two. By the way, if you'll look at the little index map
2 at the bottom. The cross section on top is actually a
3 structural cross section to show how the coal is rising and
4 lowering. You can see it going in the direction of this
5 cross section. There's not a lot of structural change. The
6 cross section below is just kind of a blown up version of
7 just the coal seam to show you how thick that seam is. It
8 averages in the area we're at five to six feet of thickness.
9 So, it's a prime horizontal target that we need to...we feel
10 we need to look into.

11

12 Now quickly on the history, not to belabor the
13 point, Penn Virginia actually in 1990 drilled a series of
14 four core holes in the Roaring Fork Field in Wise County over
15 here in the west area. They tested the coal for gas content
16 and rank as well as thickness. At the end of that testing
17 program, they determined that they didn't want to go forward
18 with the coalbed methane in place. So, they abandoned really
19 the potential for coalbed methane at that time. Equitable
20 came in 1991 and they actually purchased the conventional oil
21 and gas rights from ANR, American Natural Resources. They
22 took over operations of the Roaring Fork Field. As they
23 started drilling wells down to the conventional reservoirs,

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1 they had to drill through shallow coal sections. In doing
2 that, they discovered they had natural gas shoals in the coal
3 seams, especially over Buckknob Anticline. In fact, some of
4 them were very large gas and got them excited about potential
5 for coalbed methane. So, they approached Penn Virginia for a
6 coalbed methane lease. At this time, we had 92...over 92,000
7 acres of coalbed methane rights in Wise County and a little
8 bit of Scott County. They took that lease from us. In '93,
9 they quickly started to drill their own test program. They
10 actually drilled core holes and test wells throughout the
11 field. They felt pretty confident on the Buckknob Anticline
12 that it would work. They had natural gas fields. So, they
13 didn't do a lot of work there. They actually came over here
14 and drilled a series of these wells that were now plugged and
15 abandoned as well as put in some core holes in this area. At
16 the end of about say '94 or '95, they concluded that really
17 the only place they felt confident that vertical CBM would
18 work is on Buckknob Anticline, which really was, as a
19 geologist would say, was a no brainer because we had natural
20 gas shales. The rest of this really was written off as non
21 commercial. Since that time from '95 to the present,
22 Equitable actually returned most of that 92,000 acres back to
23 Penn Virginia. They have retained about 16,000 acres in Wise

24

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1 County. So, Penn Virginia now has most of it back, which is
2 where we're proposing these units. They also attempted a
3 little bit of gob production in 1997, I believe, that's kind
4 of a side story. But these orange blobs are that. That
5 doesn't affect us right now. So, the long and short of it
6 this...other than Buckknob Anticline, the coalbed methane
7 potential in Wise County was written off as being non
8 commercial for vertical wells.

9 Horizontal wells, the picture there was at about
10 2001, Penn Virginia started drilling horizontal wells in West
11 Virginia. We tested that method. It's almost the same
12 history as what we saw here in Wise County. We had a CBM
13 vertical play that wasn't working. We abandoned a lot of
14 leases. Now, we've started drilling horizontal wells and we
15 kind of had a second birth on those properties. To date, we
16 have about seven horizontal units similar to this size in
17 there and we're currently planning on drilling more wells.
18 So, we have, really to me, opened up a large area that we've
19 written off and is non productive in the past.

20 Why do we want to go horizontal? What are the
21 benefits of it? Obviously, when you think of this unit here,
22 that's twenty-eight 80 acre units. If we drilled that
23 vertical, that's twenty-eight wells. That's twenty-eight

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1 roads leading up to those wells. That's twenty-eight
2 pipelines coming into those. So, surface disturbance is
3 less. Dick Waddell is going to go through the drilling of it
4 later. But instead of twenty-eight wells, we have
5 four...four well bores. We have also have...the well life on
6 these is much shorter. We're thinking, you know, three,
7 maybe ten years, where a vertical well, the well life is
8 thirty-five years. So, we're in and out of there much sooner
9 for mining. Also, there is no...no casing run in the
10 horizontal part of these laterals. So, this War Creek Seam,
11 if they ever want to come back in and mine, if technology
12 enables them to do that, they can do that. We leave minimal
13 disturbance. So, it has those benefits to us other than, you
14 know, pure economics. It helps the coal industry out.
15 They're enjoying it in West Virginia right now. I think I'm-
16 --.

17 BENNY WAMPLER: When you say minimal disturbance of
18 the coal seam---.

19 TIM LEWIS: Well---.

20 BENNY WAMPLER: ---give me a little more detail on
21 what---.

22 TIM LEWIS: Well, there...as Dick is going to show,
23 we will have four well bores maximum through the coal seam
24

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1 that have to...have to be cased on the shallow. We have the
2 ground water stream and the coal seam stream for the
3 protection of the protection of coal seam as required by
4 State law.

5 BENNY WAMPLER: But in particular, the War Creek?

6 TIM LEWIS: We won't have any casing in the War
7 Creek and Dick will go through that. We're actually going to
8 stop short of the War Creek.

9 BENNY WAMPLER: But he will be the one talking
10 about that?

11 TIM LEWIS: Yeah, and he's the drilling manager.

12 JIM KISER: Well, I've got a few questions for him.

13 BENNY WAMPLER: Yeah, I was interested in like the
14 size of the bore they were going to use and things like that.
15 So, if Dick is going to do that, that's fine.

16 JIM KISER: I mean, your testimony was that the
17 thickness of the War Creek is four to five feet?

18 TIM LEWIS: It averages about three and it can get
19 up to actually 90" inches in the area, which is about eight
20 feet. The area where we're actually proposing these wells is
21 about five to six feet thick.

22 JIM KISER: And it would be your testimony that
23 other than the vertical well development that's up on the
24

1 Buckknob Anticline in the red area, this is probably the only
2 way that you're going to see development of additional CBM
3 reserves in this area of the Roaring Fork Field?

4 TIM LEWIS: Yes, that's correct.

5 JIM KISER: Which is producing revenue for several
6 entities, including the state. Then also one more question,
7 361:20, which is the statutory section dealing with field
8 rules and the establishment of them and the modification of
9 them, addresses, or requires the Board to address, allowable
10 production. Would it be your testimony that because this is
11 a low volume, low pressure reservoir or low permeability and
12 there's no correlative right, that the issue of allowable
13 production does not need to be addressed in this particular
14 case?

15 TIM LEWIS: Yeah, that's correct. We tested...
16 actually had perm data on this and tested the coal
17 vertically. It is low permeability and low pressure. So,
18 you're correct.

19 JIM KISER: Okay. I don't think I have anything
20 further of this witness at this time, Mr. Chairman.

21 BENNY WAMPLER: Questions from members of the
22 Board?

23 (No audible response.)

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1 BENNY WAMPLER: Call your next witness.

2 JIM KISER: Okay. Mr. Waddell will now address
3 the...this is a different drilling and production method than
4 you saw last year when we modified the Nora Field on behalf
5 of Equitable for a horizontal well that they drilled.
6 It's...the CBX Technology is what it is known as. Mr.
7 Waddell will go through that for you at this point.

8 DICK WADDELL: We'll just start with the major
9 difference between what you've seen with Equitable's approach
10 and the one we intend to use. First of all, Equitable uses
11 one well bore to drill the wells, only the laterals, and to
12 produce the well. This concept, one well...or basically,
13 you'll have a well bore related to each general direction of
14 these patterns represented by these circles. In the center,
15 you have the well bore that is used to drill the laterals.
16 This well, which is normally referred to as the A is not a
17 producing well. It's sole purpose in life is to do the
18 horizontal part of the total series as we refer to these.

19 The other wells, B, C, and D, one related to each
20 of the horizontal patterns is drilled through the coal
21 (inaudible) about fifty feet below this. Then it is
22 cavatated with a tool that opens a hole of about six feet in
23 diameter. These wells are all cased in accordance with

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1 existing regulations to protect fresh water stream or fresh
2 water zones and the coal protection stream. These are all
3 cemented to the surface just as if they were a conventional
4 coalbed methane well.

5 Now, what happens here is you go out and you drill
6 your cavity wells to cavatate them, case them, log them.
7 Then from this hole, they drill out and you'll set your seven
8 inch casing in the articulated hole about two hundred feet
9 above the zone of interest or the target zone. That allows
10 sufficient vertical room to make your turn. Again, the
11 casing is down through all the coal other than the target
12 zone. They come out with directional drilling tools and
13 continuous read out, real time, directional tools and
14 monitoring tools to tell at all times where this bit is
15 located.

16

17 After they have cavatated these holes, you run in
18 there with a string of tubing, which will in turn...or
19 conventionally be the production stream about three joints of
20 nonmetallic, or nonmagnetic tubing on the end of this, and
21 then run a tool called a vector tool, which places it in the
22 coal seam. Then the directional driller comes off the A
23 hole, builds his angle and he reads this tool that's in that

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1 hole and allows him to steer in and intersect these cavity
2 wells. Now, the cavity well is drilled down seven inches.
3 It is opened up to six feet. But he's back over here roughly
4 three hundred feet away, but is able to bring that in through
5 the tools and the technology he has to intersect that cavity.
6 Once a cavity is intersected, the compressor is set on its
7 respective cavity hole in whatever direction they're drilling
8 at that time. This compressor is utilized to air rate this
9 drilling fluid. These are drilled with water to aerate it to
10 help minimize the effect of the hydrostatic pressure on the
11 coal seam and allows them to lift through the vertical
12 section of the well bore, the fluids to get back to the
13 surface and recycle. Then, based upon the pattern that has
14 been developed to be considered the most economic, or the
15 most effective method of draining the unit, determines the
16 particular pattern that's drilled. There has been studies
17 run with regard to the density of these laterals. The
18 overall pattern is referred to is a peynate pattern, which
19 comes basically from how a leaf of a tree looks. You can
20 determine basically what the density of these should be at
21 this, approximately the coal thickness, the gas content of
22 the coal, various other parameters and you'd make a tradeoff.
23 How much money can I spend drilling relative to what
24

1 additional reserves I might obtain and reach hopefully the
2 ultimate combination? Roughly, one of these...and the idea
3 here is that you're maximizing the exposure to coal face to
4 an open well bore, which is the secret of coalbed methane
5 production. The more that coal has a place for the gas to
6 get out of, normally the higher the production rate will be.
7 But that is the general concept. You'll drill out the main
8 lateral, back up, kick off, come back, go out this way and
9 just repeat this process until this leg is finished. Then
10 they can go this direction and do the same thing. While in
11 most cases, they're drilling this one and this one, those
12 that have already been drilled to be put on production. Each
13 well bore is produced as an individual well bore. Each well
14 bore will be permitted as an individual well bore. But the
15 total series, they're all interdependent. So, when the day
16 comes they're no longer economic to produce, we talk about
17 plugging. Then it's plugged as a series of wells because the
18 A, even though it is never produced, served as a method if
19 you ever had problems in one of these to hopefully be able to
20 reenter in it to clean it out or something like that. So,
21 that's why that well bore remains there until such time as
22 you determine its economic production has been reached within
23 each one of these lateral sections. That is basically it.

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1 Cost wise, you can figure that you'll spend \$20,000
2 a day while you're drilling assuming everything goes right.
3 One of these legs or patterns, just a rule of thumb, will
4 cost you a million dollars. But, again, going back to what
5 Tim Lewis mentioned if you take three million dollars and
6 twenty-eight times \$200,000 or 5.6 million dollars worth of
7 vertical conventional CBM wells, which probably would never
8 produce near the amount of gas that this approach would
9 anyway. So, cost effective in that regard one thing that
10 makes it...allow you to bear the higher drilling costs or the
11 high drilling cost is the rate of return. These wells four
12 years or five years at the most you're going to probably
13 going to get your gas out of them. They produce very fast.
14 We have some in West Virginia right now. One, the open flow
15 on it was seven and a half million a day. It also unloaded
16 on its own close to five hundred barrels of water. Now, this
17 was the exception. But the overall program, we were very
18 satisfied with it. We just feel it's a way to go. It's a
19 method of getting a resource that you just cannot extract by
20 the methods other than or the conventional vertical wells
21 just don't seem to work.

22 Any questions?

23 JIM MCINTYRE: What do you do with solids?

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1 DICK WADDELL: Okay, the solids are just brought
2 back to a pit. You're circulating the fluid and the solids
3 come back---.

4 JIM MCINTYRE: It's like a conventional well?

5 DICK WADDELL: Just like a conventional well.

6 JIM MCINTYRE: How big would the pit be?

7 DICK WADDELL: Well, rough...as a rule of
8 thumb...okay, I've heard the question come up, how big of a
9 hole did you drill out here? About four and three quarter
10 inches. So, you just calculate the total whole volume and
11 multiply that times 1.75 and that will give you an idea as to
12 the pit volume, you will need to hold and cut and trim one of
13 these plus allow two feet (inaudible). Of course, they'll
14 swell as they always do. Then the disposal method, you know,
15 is just in accordance with pit closing and things like that
16 would be in accordance with the DGO requirements.

17 JIM MCINTYRE: What do you get the water? Are you
18 going to pump water down that well and recycle it and
19 recirculate?

20 DICK WADDELL: Oh, yeah. You have to...you have to
21 have a fresh water source. That's correct. I think I...on
22 these two that's in the permit packages, I'm sorry, I can't
23 tell you right off the top of my head the two that have
24

1 been...the water source that has been identified for these
2 items. But it has been, you know, and they have been
3 earmarked and will be included as part of the permit package.
4 But, again, you don't just pump this water down and never
5 see it again. You're allowed...you know, you don't get a
6 hundred percent---.

7 JIM MCINTYRE: You recycle and recirculate it,
8 yeah.

9 DICK WADDELL: No, you are recirculating. You do
10 not, of course, get a hundred percent of it back. By putting
11 the air compressor on here and helping you lift that fluid
12 back. They have steel tanks at the surface, you know, just
13 like redrilling of the fluid. So, it's not a case of just
14 the one way loss of the water.

15 BILL HARRIS: I have a question just about the
16 solids that come up.

17 BENNY WAMPLER: Mr. Harris.

18 BILL HARRIS: Are you talking coal there?

19 DICK WADDELL: It would be coal except---.

20 BILL HARRIS: When you first vertical.

21 DICK WADDELL: ---the first vertical. That's
22 correct.

23 BILL HARRIS: Is this...this just shows how
24

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1 ignorant I am about this, does this, and I know you're
2 talking about putting this in the pit, is that reclaimed at
3 all or is that used for anything or is it just started or---?
4 DICK WADDELL: I guess there is a possibility it
5 could be reused.
6 BILL HARRIS: I don't know what the percentage
7 normally is for this...this kind of a thing.
8 DICK WADDELL: To find a buyer, would it be
9 economical to handle it or the permit there, I can't answer
10 that.
11 BILL HARRIS: Yeah, yeah. Are we just talking real
12 fine substance?
13 DICK WADDELL: Oh, yes, it's ground up. It's
14 pulverized.
15 BILL HARRIS: Yeah.
16 DICK WADDELL: It's a regular drilling bit---.
17 BILL HARRIS: Like a slurry that's getting pumped.
18 DICK WADDELL: It's almost a slurry.
19 BILL HARRIS: Yeah, yeah.
20 JIM KISER: Let me address one other issue why I've
21 got Dick up there. Dick, if you'll turn to the unit for
22 HCBM3, which is the smaller unit, and we formed the way we
23 did in order that it would be a 100% Penn Virginia mineral
24

1 acreage. If you'll note, the articulation well and maybe the
2 cavity wells are outside the interior window of the old
3 standard 80 acre units. We'd ask that the order for that
4 unit, HCBM3, include language that would allow us to spud and
5 encounter the War Creek seam outside the...in the 300 foot
6 tolerance area in order to drill that particular pattern.
7 There are no correlative rights issues. Mr. Wilson, under a
8 normal vertical CBM well in the permitting process, would
9 have the ability to grant location exception. We'd ask that
10 that language for this particular well be included in this
11 provisional unit. Then our plan would be once we have our
12 experience with this and we come back and ask the Board for a
13 permit or final order in that request, we'd ask that in the
14 future establishments of these horizontal units that he be
15 allowed to grant an exception through the modified field rule
16 or through the field rule. Again, we essentially would be
17 excepting from ourselves. The actually cavity wells that
18 produce out of right on the window line anyway and in
19 order...since there are no correlative rights issues and in
20 order to effectuate that particular pattern, which is the
21 most efficient and most effective pattern because of the size
22 and shape that unit. We'd ask that the order...rather
23 than... it's going to have to be two separate orders anyway
24

1 because the units are two different sizes. But we'd ask that
2 the order for HCBM3 include the right to drill that well
3 that...drill articulation and cavity wells there.

4 BENNY WAMPLER: Is the unit that you've created in
5 the top portion going out with three leafs if you will, is
6 that optima, and if it is why...why didn't you move down far
7 enough on the next one to do three that way? Why does your
8 pattern change?

9 DICK WADDELL: Well, the longer you can drill
10 straight out, the cheaper these are. Any major turn can
11 equate to a day's drilling to make these turns. So, that's
12 another thing you must consider. Once you get on this
13 lateral, or these main laterals, on a good day they can make
14 1500 or 2000 feet of hole. Every time you have to stop and
15 make a turn and back up and start another direction, that's
16 costly. Again, the more simplified explanation of it is it's
17 just the minium...minium number of these patterns it takes to
18 drain an area the better off you are.

19 BENNY WAMPLER: I guess what I'm asking though---.

20 TIM LEWIS: I can...I can answer some of that
21 too---.

22 BENNY WAMPLER: Okay.

23 TIM LEWIS: ---because I designed the units.

24

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1 BENNY WAMPLER: All right.

2 JIM KISER: Well, let me...before you start on
3 that, let me also point out on the exception issue on HCBM3,
4 topographically that's by far and away the best spot to drill
5 that particular well.

6 TIM LEWIS: The one reason why we don't have three
7 down there is if you'll see the tract which would be to your
8 right, which would be the east that red...heavy red line.

9 BENNY WAMPLER: Right.

10 TIM LEWIS: That is a Blackwood Land lease. We
11 don't have the CBM rights on that. So, if we went to a much
12 larger unit, we would be force pooling them. We felt we
13 didn't want to test the force pooling with this new technique
14 now. Also, as Jim mentioned, topographically since we take
15 a...you know, the well site is a little larger because we're
16 drilling four holes, or three holes in this case, all close
17 together, that's the best place for it. We're also trying to
18 avoid, based on our own decision, avoid the tract where the
19 Middle School is just because we feel that's the right thing
20 to do. I could go into the thickness of the coal, too. It's
21 very thick there. So, we're trying to stay in the heart of
22 the coal.

23 JIM KISER: I guess Benny's question is why not

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1 make them all 2240?

2 BENNY WAMPLER: Yeah, why didn't you move that
3 further south basically just to be point blank so that you
4 could make it just like the one above?

5 TIM LEWIS: I'll look...turn back to Exhibit A.

6 BENNY WAMPLER: Right.

7 TIM LEWIS: Another reason why I really can't do a
8 three prong approach here is see how tight the contours are.
9 We're really coming up on the structure. I think that would
10 be too hard horizontally to drill for us. But we have...in
11 West Virginia, based on the coal thickness and economics, we
12 could do like...we could do one. This would be the maximum
13 where you have four well bores and three producing
14 wells...three (inaudible) well. We typically do two. But we
15 have done one. It all...it varies each time. Maybe that's
16 not the best answer for you.

17 BENNY WAMPLER: I'm just trying to understand it.
18 I mean, you know, if you couldn't configure going south, I
19 could understand there. But then my question would be, why
20 didn't you move the first one north so that you could have
21 two of the same.

22 TIM LEWIS: I was mainly trying to stay in the five
23 and six feet of coal.

24

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1 BENNY WAMPLER: Okay.

2 TIM LEWIS: If we're going to test it, I'm trying
3 to get my best geologic shot, I guess.

4 JIM KISER: And we had a third unit that we were
5 also going to file for this month, but---.

6 TIM LEWIS: You're right, Jim. There actually is a
7 third unit above that, but that takes in a piece of the ARC
8 Land lease which we don't have.

9 JIM KISER: And we don't feel like we'd exercise
10 due diligence in trying to obtain a lease from them, yeah, at
11 this point.

12 TIM LEWIS: And it is one of these.

13 JIM KISER: And so we're going to wait and file
14 this one.

15 TIM LEWIS: It is a three prong approach. So,
16 there is actually a proposed unit up here and we're talking
17 to ARC Land now trying to entice them into leasing to us so
18 we don't have to do a force pool.

19 JIM MCINTYRE: You hit on something when you were
20 talking about the adjoining material owner. How far does
21 that gas migrate?

22 TIM LEWIS: From our studies that we have done in
23 West Virginia is we're looking around 500 feet out from these
24

1 laterals.

2 JIM MCINTYRE: Uh-huh.

3 TIM LEWIS: So, we've got a 600 foot buffer between
4 these units and that's one reason why we wanted to close
5 here to 80 acre unit. So, that fits nicely with what our
6 modeling says. So, 500 to 600 feet is, I think, a good
7 buffer for that.

8 JIM MCINTYRE: Okay.

9 MASON BRENT: I notice in both units, for instance,
10 in the top one, the larger one, you have not extended into,
11 for lack of better term, subunit AX-30 and then other one BA-
12 31. You've not extended into those units. What's...
13 what's...why are they included in the overall units if you're
14 not actually in them.

15 TIM LEWIS: Right. The green boundary is actually
16 the outline of the unit. Why we haven't taken in this unit?

17 MASON BRENT: Well, not that unit. I'm sorry.

18 TIM LEWIS: You said A---.

19 MASON BRENT: If you go up...no, BA-31. Yeah, that
20 one.

21 TIM LEWIS: Okay.

22 MASON BRENT: It doesn't appear to me that you're
23 drilling into that existing unit, right?

24

1 TIM LEWIS: But I'm probably...I'm probably
2 draining about 500 feet away. Also, if we adhere to the 80
3 acre vertical rule, which we're trying to help...help ourself
4 with, I've already...I'm already outside that interior
5 window. So, that would...I would have to take in that unit
6 or ask for a force pooling if I didn't own it, but I do own
7 it.

8 JIM KISER: We're trying to keep all the laterals
9 within the interior windows because of the migration issue.

10 MASON BRENT: Right.

11 TIM LEWIS: So, I think I...reservoir wise, I think
12 I probably am draining that area and also based on being
13 outside the interior window. I probably should include that
14 at least in my mind.

15 MASON BRENT: Okay. And does the same hold true up
16 there with AX-30?

17 TIM LEWIS: Right here. Yes, because you see this
18 lateral comes out---.

19 MASON BRENT: Right.

20 TIM LEWIS: ---it's in the interior window. If you
21 go 500 feet, you've probably got it.

22 BENNY WAMPLER: Going back down to the...follow up
23 on a question in the BA-31. Is there any...any technique
24

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1 that would prevent you from just bringing one lateral out?

2 TIM LEWIS: Well, I work with many designs down
3 here. One thing we are limited to is drilling this thing out
4 from the articulating hole, the hole extent labeled as...I
5 want to call it the A hole. At about 5,000 feet out. We can
6 drill about 5,000 feet out and then get into the physics of
7 the tool and torque and the friction. You may get stuck.
8 You don't want to risk your life. So 5,000 feet is very
9 comfortable. But then each time we make a turn here,
10 obviously that turn takes time and there's friction with the
11 drill pipes. So, we can only push out so far. You know,
12 it's really the physics of the tool. I've played with a lot
13 of patterns here. We're trying to avoid...also avoid this
14 gas well right here. So, I mean, I could have gotten more
15 straight, but I don't want to interfere with the gas well,
16 which is Equitable's gas well.

17 BENNY WAMPLER: Well, then there's technically not
18 a problem with just branching out in one direction? You're
19 about...you're more or less showing a balance. When you go
20 out in one direction, you're going to come back and go out
21 the other direction.

22 TIM LEWIS: A good rule...a good rule of thumb we
23 like to make these is a 120 degrees. You've got your center
24

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1 hole, your articulating hole. You put the first well out
2 here and 120 degrees over another 120. So, you take in the
3 whole 360, if you have three. From the drilling standpoint,
4 they seem to prefer that.

5 BENNY WAMPLER: But if you weren't...if you weren't
6 out to your maximum length that you like to play with there,
7 you could...you could actually bring an arm down into
8 the...into BA-31, just that one side and not the other?

9 TIM LEWIS: Yes. Yes, we could. That's a good
10 thing about the horizontal drilling is we can design the
11 pattern to fit the coal thickness to avoid, you know, force
12 poolings if you want.

13 BENNY WAMPLER: If you were in the payout situation
14 and you didn't own all of that, you would be paying BA-31
15 just the same as you would anybody in there, all parties in
16 that would be paid the same?

17 TIM LEWIS: Correct. Whatever there are...whatever
18 their interest is in that unit, obviously, we would have to
19 include them and pay them royalty.

20 BENNY WAMPLER: Okay.

21 MASON BRENT: And the reason you don't have that
22 situation elsewhere is your laterals have not extended beyond
23 the 300 foot window within the---?

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1 TIM LEWIS: Right. Yeah, as you can see with this
2 lease here being out and we actually stopped this about...it
3 looks about 700 feet shy of that red line. That's 300 and
4 that's 300 or little bit inside that. Our drainage, we
5 think, is about 500 feet. So, I think we're more than safe
6 avoiding this lease.

7 JIM KISER: And to elaborate further on Benny's
8 question, if in the future, we have units where we have
9 royalty owners other than Penn Virginia, other than the
10 operator, then whether or not a lateral extends through their
11 acreage or not, they would be paid just like a conventional
12 CBM force pooled unit. They would be paid on a pro-rata
13 share on the basis of their acreage in the unit.

14 TIM LEWIS: Of course, we'd try to attempt to lease
15 them first.

16 JIM KISER: Yeah, which is why we didn't...why we
17 didn't file that other one because we're still making an
18 effort there.

19 BOB WILSON: Mr. Chairman?

20 BENNY WAMPLER: Mr. Wilson.

21 BOB WILSON: Make a comment, our singular to date
22 experience is with Equitable's project that the Board
23 authorized the Nora Field some time back. If you remember in
24

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1 that, the stipulation was made that no lateral could go more
2 than 300 feet from the edge of any unit. In other words,
3 respecting the setbacks that are already existing there.
4 Beyond that, the pattern itself is not fixed. In other
5 words, the pattern at the Equitable well was changed during
6 the drilling process. We don't really care so long as their
7 completion report comes in and shows us where this stuff is.
8 They are respecting that setback boundary.

9 BENNY WAMPLER: Are you comfortable with what...
10 what they have here?

11 BOB WILSON: Yes, sir. I have had the opportunity
12 to look at this with these folks and with the CDX folks that
13 actually came up with this process. I've seen a couple of
14 their presentations as well. This is a very well developed
15 process as opposed to what Equitable did, which was basically
16 they went out on their own in trying to invent their own
17 process. They're to some degree struggling with it. But
18 this particular process, as a matter of a fact, there are a
19 ton of patterns associated with this process that these folks
20 are having to deal with. But it has been used quite a bit in
21 West Virginia and in some other places quite successfully.
22 It does...again, to go to the production consideration, it is
23 an opportunity to develop a resource here that, if history is

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1 any indication, would not be developed by ordinary means
2 because both Equitable and Penn Virginia have tested this
3 stuff through vertical wells. It just hadn't been economic.

4 JIM KISER: Mr. Chairman, I guess I should point
5 out that we did---.

6 BENNY WAMPLER: Mr. Kiser.

7 JIM KISER: ---prior to filing the applications, we
8 did have a lengthy meeting with Mr. Wilson and it is expected
9 for this area.

10 BENNY WAMPLER: Other questions from members of the
11 Board?

12 (No audible response.)

13 BENNY WAMPLER: You have a problem I think, Jim,
14 with the...Mr. Kiser, with the application itself on the
15 docket number 94-0215-0435-02 under your 4.1, your relief
16 sought.

17 JIM KISER: The acreage? Did you all not get those
18 corrected pages? It should be 1200 instead of 24 or 22---.

19 BENNY WAMPLER: Well, this copy is the same thing
20 that's in the other previous one, 28 established units in
21 the---.

22 JIM KISER: Right. And I sent corrected pages
23 over.

24

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1 BENNY WAMPLER: Well, I don't have it.
2 JIM KISER: You don't have them?
3 BENNY WAMPLER: Mr. Wilson...Mr. Wilson has them.
4 BOB WILSON: I have corrected pages.
5 JIM KISER: You have them, okay. I'm sorry about
6 that.
7 BENNY WAMPLER: And this will be for coalbed---.
8 (Benny Wampler and Sharon Pigeon confer.)
9 BENNY WAMPLER: I've had two things I've been
10 trying to overcome. That was one of them. You've overcome
11 that in my mind. The other one was this whole business of
12 publication/notice. While I agree that you're not required
13 per say under the field rules to do that, at some point, we
14 have a requirement in the regulation that...yeah, that we
15 cause the publication and whether or not it would be of
16 sufficient detail. I'm just trying to make sure we don't
17 have...you know, something this big of a feature, we don't
18 have a notice issue here because our rules say that each
19 applicant shall include in or will be mailed notice of the
20 hearing under required section and all that information
21 whether or not the name and the address and the applicant,
22 relief sought, citations, statute and etcetera. You might
23 take a look at that and I'll ask you to work with our
24

1 attorney to see if it behooves us to republish on that one.
2 If it's okay with the Board, I'm just talking openly here
3 just to make sure that's not a flaw that we need to cover on
4 one side or the other. The Board can continue it and publish
5 it in more detail.

6 SHARON PIGEON: What did we publish from them, Bob,
7 the corrected notice?

8 BOB WILSON: Excuse me?

9 SHARON PIGEON: What did the Board publish from?

10 BOB WILSON: We published just the---.

11 SHARON PIGEON: The docket?

12 BOB WILSON: ---notice of the hearing. Yeah, the
13 docket notice of hearing. Yeah.

14 JIM KISER: And you're thinking that we needed to
15 publish more than that?

16 SHARON PIGEON: Well, it's a little...the
17 regulation says all of this would be in the notice. Not the
18 statute but the reg, all this detail---.

19 JIM KISER: So, we'd have to publish application
20 also, is that what you're saying?

21 BENNY WAMPLER: Let me look at that.

22 SHARON PIGEON: See, this is...if the docket list
23 is the only thing that's published, it doesn't contain all
24

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1 that information.

2 BOB WILSON: No, all we publish is the...the actual
3 docket that you see here---.

4 SHARON PIGEON: This sheet here.

5 BOB WILSON: ---which includes just the pertinent
6 information about the item that's coming up.

7 JIM KISER: Well, the notice certainly states what
8 relief we're seeking to combine units---.

9 BOB WILSON: I'm not sure I understand the
10 requirement that we haven't done here.

11 SHARON PIGEON: The relief he's seeking, according
12 to what we got, is inaccurate. Then apparently, there was a
13 correction. If this is the only thing that's published---.

14 JIM KISER: Well, actually the notice is correct.
15 The application is incorrect. Look at the notice.

16 BENNY WAMPLER: Yeah, I noticed the notice said
17 28---.

18 SHARON PIGEON: But you see what the notice is
19 supposed to contain there. Are you looking at the reg?

20 JIM KISER: Yeah. "Statement of relief sought and
21 proposed provisions of the order or proposed order." It says
22 "Modify the prior order dated May 31 to allow them to
23 establish provisional unit by combining fifteen establish
24

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1 units into a single unit consisting of 1200 acres for
2 purposes of drilling a maximum of four horizontal coalbed
3 methane gas wells." What else do you want it to say?

4 SHARON PIGEON: Well, I would want it to be
5 consistent with the application that was filed.

6 JIM KISER: Well, if it's a notice problem,
7 it's...if the notice is right, then there's no problem. The
8 application goes to you all or any other parties that we sent
9 it to.

10 SHARON PIGEON: Well, the application would be
11 available for anyone to look at and---.

12 JIM KISER: Right. I sent the corrected parts of
13 the application prior to the hearing.

14 SHARON PIGEON: Yeah, how...what time frame did you
15 get those in?

16 JIM KISER: They were mailed on...as soon as I
17 recognized the error, they were mailed on---.

18 BOB WILSON: We got them on the 14th.

19 SHARON PIGEON: The 14th of January?

20 (Benny Wampler and Sharon Pigeon confer.)

21 JIM KISER: I mean, on your regular hearings for a
22 force pooling or...well, you don't publish on location
23 exceptions unless there's an unknown. But the notices for
24

1 those don't include any more than that.

2 BENNY WAMPLER: Well, I'm more comfortable in the
3 fact that Penn Virginia owns everything.

4 JIM KISER: Right.

5 BENNY WAMPLER: It's kind of like noticing
6 yourself. I think that's the difference. We're just
7 discussing this because as we have the others, I think we've
8 tried to...in notices before, we've tried to say the Board on
9 its own motion is going to field rules or, you know, in this
10 case, when they publish what kind of notice requirement they
11 would have...the applicant would have, do you follow me, in
12 noticing?

13 BOB WILSON: I'm confused. Are you talking about
14 the notice that was given in the docket that was published or
15 are you talking about notice that Penn Virginia gave?

16 BENNY WAMPLER: Talking about the notice that was
17 published.

18 BOB WILSON: In other words, our docket?

19 BENNY WAMPLER: Yes.

20 BENNY WAMPLER: I was talking earlier about the
21 notice they gave as to whether or not they felt they needed
22 to notice the surface owner. There's no requirement in the
23 field rule consideration in the statute to not---.

24

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1 BOB WILSON: Yeah, I would say that if, in fact,
2 this is not adequate notice, then probably it's going to be
3 that way for everything we do because we followed the same
4 format on this in constructing this docket item that we have
5 forever, you know.

6 BENNY WAMPLER: Well, the issue was though they
7 had...they had a different relief. They had copied the same
8 relief in both and then they corrected it.

9 JIM KISER: We had made a typo.

10 BENNY WAMPLER: That's what brought it up, Bob, as
11 to whether or not they had---.

12 BOB WILSON: Yeah, I'm just trying to make sure I
13 know where we fit into this.

14 BENNY WAMPLER: Right.

15 JIM KISER: There was a typo in the application
16 that said both the units were 2240 instead of one of them
17 being---.

18 BENNY WAMPLER: Right.

19 JIM KISER: ---1200.

20 BENNY WAMPLER: Right.

21 JIM KISER: But the notices for some reason were
22 correct in the size of the unit and the number of the units
23 being combined and the relief requested. I agree with Mr.

24

--

1 Wilson if that's not correct, then it has never been correct.

2 BENNY WAMPLER: Well, here again it just went to

3 the fact that...was it...did we have the information when we

4 had the...and, obviously, you go that somewhere to be correct

5 at the time of the notice. But, you know, I didn't...we

6 didn't have the information that you had corrected that.

7 SHARON PIGEON: Right.

8 BENNY WAMPLER: The Board members didn't. Mr.

9 Wilson had it.

10 JIM KISER: But your notices were correct that you

11 published.

12 BENNY WAMPLER: I understand.

13 JIM KISER: But the applications were incorrect.

14 We corrected them in time if somebody wanted to come look at

15 them before this hearing, they would have had time to see the

16 corrected. Therefore, I don't see what is the problem.

17 BENNY WAMPLER: I agree with that. I just---

18 JIM KISER: Okay.

19 SHARON PIGEON: Yeah.

20 BENNY WAMPLER: ---openly discussed it.

21 JIM KISER: Okay.

22 SHARON PIGEON: We needed to know that on the

23 record.

24

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1 JIM KISER: Okay. Are you going to swear me in?
2 (Laughs.)
3 BENNY WAMPLER: Well, Mr. Wilson has already
4 testified to that as to when he received it and he published
5 it correctly. Any other...any other questions from members
6 of the Board?
7 (No audible response.)
8 BENNY WAMPLER: Do you have anything further?
9 JIM KISER: Mr. Chairman, we'd ask that the
10 applications be approved as submitted; be made effective as
11 of this date. We have the permits with us today to give Mr.
12 Wilson. Of course, these are provisional units. Then
13 approved as provisional units. Hopefully, we'll back
14 in...I'm going to try to work with...we don't want to have to
15 keep doing this. If these are successful, we want to try to
16 find a way that...I don't know if there is one. But we'd
17 like to try to work with Mr. Wilson and Sharon and yourself
18 and the Board to see if...if we don't have to pool anybody,
19 if they are all voluntary units, if there's some way we can
20 do this without having to come back every time, maybe there
21 isn't. But at least once we get this done and established,
22 we can come back and ask for a permit order in the---.
23 BENNY WAMPLER: That would be the way to do it, I
24

1 would think, is to come back after you have the information
2 to present to the Board why it shouldn't be provisional and
3 why it should be something that could be done. Then modify
4 the field rules to allow it.

5 JIM KISER: Allow for the establishment of
6 different size of units by combining the---.

7 BENNY WAMPLER: Right. Yes.

8 JIM KISER: Okay.

9 BENNY WAMPLER: Where you could show that there
10 was---.

11 JIM KISER: Obviously, if we do have to pool in---.

12 BENNY WAMPLER: ---cost effective to do that.

13 JIM KISER: ---unleased acreage, then we have to
14 come back anyway.

15 BENNY WAMPLER: Right.

16 JIM KISER: Probably in most instances, we're not
17 going to have to do that.

18 BENNY WAMPLER: Do you anticipate a lot of water
19 with these?

20 DICK WADDELL: We don't anticipate a lot of water
21 out of the War Creek.

22 TIM LEWIS: Yeah, it's...from our studies and
23 production on the Buckknob Anticline, it's pretty tight, low
24

1 permeability coal and produces little water at least
2 vertically. I don't anticipate huge volumes of water
3 drilling horizontally either.

4 BENNY WAMPLER: Do you have provisions to deal with
5 it if you do?

6 TIM LEWIS: Yes. Currently all of the salt water,
7 which is mainly what it's produced in the conventional as
8 well as the CBM wells, I believe Equitable takes that to a
9 disposal well in Kentucky at this time. They haul it to
10 Kentucky.

11 BENNY WAMPLER: Anything further?

12 (No audible response.)

13 BENNY WAMPLER: Is there a motion?

14 JIM MCINTYRE: Motion to approve.

15 BILL HARRIS: Second.

16 BENNY WAMPLER: Motion to approve and second. Any
17 further discussion?

18 (No audible response.)

19 BENNY WAMPLER: All in favor, signify by saying
20 yes.

21 (All members signify by saying yes.)

22 BENNY WAMPLER: Opposed, say no.

23 (No audible response.)

24

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1 BENNY WAMPLER: You have approval. Thank you.
2 JIM KISER: Thank you.
3 BENNY WAMPLER: Good luck.
4 BILL HARRIS: Yeah.
5 BENNY WAMPLER: Hope it works.
6 TIM LEWIS: We do too.
7 BENNY WAMPLER: Any further business for the Board?
8 (No audible response.)
9 BENNY WAMPLER: You received a copy of the minutes
10 from the last meeting. Is there any corrections or
11 additions?
12 (No audible response.)
13 BENNY WAMPLER: If not, I'll entertain a motion to
14 approve.
15 JIM McINTYRE: Motion to approve.
16 BENNY WAMPLER: Motion to approve. Is there a
17 second?
18 MASON BRENT: Second.
19 BENNY WAMPLER: Second. Any further discussion?
20 (No audible response.)
21 BENNY WAMPLER: All in favor, signify by saying
22 yes.
23 (All members signify by saying yes.)
24

1 BENNY WAMPLER: Opposed, say no.

2 (No audible response.)

3 BENNY WAMPLER: They're approved. Thank you.

4 Thank you all very much.

5

6

7 STATE OF VIRGINIA,

8 COUNTY OF BUCHANAN, to-wit:

9 I, Michelle Brown, Court Reporter and Notary Public
10 for the State of Virginia, do hereby certify that the
11 foregoing hearing was recorded by me on a tape recording
12 machine and later transcribed by me personally.

13 Given under my hand and seal on this the 16th day
14 of February, 2004.

15 NOTARY PUBLIC

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My commission expires: August 31, 2007.

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